DOCUMENT RESUME

ED 457 937 JC 010 696

TITLE	California Community Colleges: Poor Oversight by the Chancellor's Office Allows Districts to Incorrectly Report Their Level of Spending on Instructor Salaries.
INSTITUTION	California State Office of the Auditor General, Sacramento.
REPORT NO	CA-BSA-2000-103
PUB DATE	2000-10-00
NOTE	84p.
AVAILABLE FROM	California State Auditor, Bureau of State Audits, 555 Capitol Mall, Suite 300, Sacramento, CA 95814. Tel: 916-445-0255. For full text: http://www.bsa.ca.gov/bsa.
PUB TYPE	Reports - Evaluative (142)
EDRS PRICE	MF01/PC04 Plus Postage.
DESCRIPTORS	Budgeting; *Community Colleges; Educational Finance; *Financial Audits; Financial Policy; Financial Problems; Laws; Legislation; *Resource Allocation; School District Spending; School Funds; *State Legislation; State School District Relationship; *Teacher Salaries; Two Year Colleges
IDENTIFIERS	*California Community Colleges

ABSTRACT

This report by the California State Auditor reports that six of 10 California community college districts audited are incorrectly reporting their levels of spending on teacher salaries. State law requires that districts spend 50% of their current educational expenses on instructor salaries each year. By mandating this spending level, the legislature hoped to reduce class size and increase the effectiveness of classroom instruction. The 50% law specifies that districts should compute their compliance rates by dividing instructor salaries by current educational expenses. Instructor salaries should be calculated by using the salaries and fringe benefits of instructors and instructional aids. The figure should be reduced for time instructors spend in non-instructional positions, such as department chairs. Current educational expenses are total expenditures reduced by exclusions outlined in the law. In general, districts overreported their compliance rate in two ways: (1) by including administrative salaries and benefits in instructor salaries; and (2) by excluding normal operating expenses from current educational expenses. The report concludes that ineffective oversight by the Chancellor's Office allows districts to misreport their compliance rates. The report includes responses from school districts that fell below the 50% threshold, along with the auditor's response to their comments. The report estimates that the six districts that fell short spent $10 million too little on instructor salaries. (NB)

Reproductions supplied by EDRS are the best that can be made
from the original document.

ED 457 937

California State Auditor

BUREAU OF STATE AUDITS

California Community Colleges:

Poor Oversight by the Chancellor's Office Allows Districts to Incorrectly Report Their Level of Spending on Instructor Salaries

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
X This document has been reproduced as received from the person or organization originating it.
☐ Minor changes have been made to improve reproduction quality.
• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

October 2000
2000-103

BEST COPY AVAILABLE

The first five copies of each California State Auditor report are free.
Additional copies are $3 each, payable by check or money order.
You can obtain reports by contacting the Bureau of State Audits
at the following address:

California State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, California 95814
(916) 445-0255 or TDD (916) 445-0255 x 216

OR

This report may also be available
on the World Wide Web
http://www.bsa.ca.gov/bsa/

Alternate format reports available upon request.

Permission is granted to reproduce reports.

CALIFORNIA STATE AUDITOR

ELAINE M. HOWLE
STATE AUDITOR

STEVEN M. HENDRICKSON
CHIEF DEPUTY STATE AUDITOR

October 12, 2000 2000-103

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the Bureau of State Audits presents its audit report concerning whether the California Community Colleges Chancellor's Office (Chancellor's Office) provides appropriate direction to community college districts (districts) on how to calculate their compliance with the requirement to spend 50 percent of their current educational expenses on salaries of classroom instructors and whether districts are accurately reporting their compliance. This report concludes that poor oversight by the Chancellor's Office allows districts to incorrectly report their level of spending on salaries of classroom instructors.

Respectfully submitted,

Steven M Hendrickson
for

ELAINE M. HOWLE
State Auditor

CONTENTS

Summary 1

Introduction 5

Audit Results

District Calculations of Compliance Rates Contain Errors 9

The Chancellor's Office Needs to Increase Its Oversight to Ensure Districts Comply With the Law 17

Recommendations 21

Appendix

Bureau of State Audits' Recalculation of Compliance Rates 23

Responses to the Audit

California Community Colleges Chancellor's Office 25

Allan Hancock College 37
California State Auditor's Comments 41

Kern Community College District 43
California State Auditor's Comments 47

Mt. San Jacinto Community College District 49
California State Auditor's Comments 53

Peralta Community College District 55
California State Auditor's Comments 59

Santa Monica Community College District 63
California State Auditor's Comments 71

West Hills Community College District 73
California State Auditor's Comments 81

SUMMARY

Audit Highlights . . .

Our review found that:

- ☑ *Six of 10 districts did not meet the 50 percent threshold for spending on instructor salaries despite having reported compliance with the law.*
- ☑ *We estimate that, in total, the six districts spent $10 million too little on instructor salaries.*
- ☑ *Districts overstated their compliance rates by including noninstructional costs in instructor salaries and by excluding costs that should remain in current educational expenses.*
- ☑ *Board of Governors' regulations allowing districts to exclude costs for certain ancillary services not explicitly stated in the law do not further the Legislature's goal of providing more funding for instructional programs.*
- ☑ *Chancellor's Office training and monitoring is weak and does not provide adequate guidance or identify district misreporting. It also does not monitor the CPAs on whom it primarily relies to verify whether district reports are accurate.*

RESULTS IN BRIEF

Community college districts (districts) are not accurately reporting the level of resources they dedicate to salaries for classroom instructors. Since 1961, state law has required that districts spend 50 percent of their current educational expenses on instructor salaries each year. By mandating this spending level, the Legislature hoped to reduce class size and increase the effectiveness of classroom instruction. However, districts are overstating their reported compliance rates. The districts are not correctly using the law's formula for calculating the percentage they spend on instructor salaries. Also, the districts' errors in determining compliance have gone unnoticed by the California Community Colleges Chancellor's Office (Chancellor's Office), whose weak oversight has failed to ensure that districts understand the law's requirements or that Certified Public Accountants (CPAs) who audit the districts receive and follow effective procedures for catching errors.

Although the Chancellor's Office records indicate that all 71 districts reported spending at least 50 percent of their current educational expenses on instructor salaries in fiscal year 1998-99, compliance rates for 6 of the 10 districts we visited fell below the 50 percent mark during this period. We estimate that, in total, the six districts spent $10 million too little on instructor salaries.

The 50 percent law specifies how districts should compute their compliance rates, which is to divide instructor salaries by current educational expenses, and defines the numerator and denominator of this equation. Districts should calculate instructor salaries using the salaries and fringe benefits of instructors teaching students and of instructional aides, and then reduce this figure by the portion of salaries and benefits for time instructors spend in noninstructional positions, such as department chairs. They are to compute current educational expenses as total expenditures—including employee salaries and benefits, utilities, and supplies—reduced by exclusions outlined in the law, such as costs for purchasing or leasing capital equipment. The reported compliance rate can be

overstated by increasing instructor salaries or decreasing current educational expenses. In general, districts overreported their compliance rates in two ways:

- Including administrative salaries and benefits in instructor salaries.

- Excluding from current educational expenses normal operating expenses.

For example, one district inappropriately raised its compliance rate by including in its instructor salaries almost $1.4 million of salaries and benefits for instructors whom it reassigned to noninstructional duties. Another district inappropriately improved its compliance rate by removing $3.9 million for grounds maintenance and custodial services from its current educational expenses. We also found that districts inappropriately excluded their matching funds for certain federal and state funded programs from their current educational expenses. In a few cases, district policies or decisions to include or exclude certain costs were incorrect, indicating both that districts have trouble interpreting the law and the instructions in the Chancellor's Office's Budget and Accounting Manual, and that districts are not consistently following them. Other districts could not substantiate the adjustments they made to accounting data in arriving at reported costs, or they made mistakes in compiling and accounting for expenditures.

Because regulations adopted by the Board of Governors allow districts to exclude certain noninstructional activities, districts have incorrectly reduced their current educational expenses for money spent on activities that the law does not exclude. The law specifically excludes expenditures for only three such activities—student transportation, food services, and community services. The Chancellor's Office argues that the regulations are correct because the Legislature intended to exclude all ancillary activities, including bookstore, child development, parking, and student housing operations. The law specifically describes the three excluded activities and does not include a general or "other" category for similar activities. Accordingly, the districts should include in their current educational expenses any payment from the unrestricted general fund that they use to subsidize these other activities. Increasing current educational expenses would further the Legislature's goal of providing more funding for instructional programs.

Ineffective oversight by the Chancellor's Office allows districts to misreport their compliance rates and does not ensure that they take corrective action. Beyond providing districts with its manual and one page of instructions for completing the compliance form, the Chancellor's Office gives little guidance or training to the districts on calculating their compliance with the 50 percent law. The Chancellor's Office relies primarily on district-hired CPAs to verify whether the districts reports are accurate, but because these CPAs use inadequate audit procedures developed by the Chancellor's Office, they fail to discover errors. Also, some CPAs even fail to demonstrate that they have completed the audit procedures from the Chancellor's Office. Since fiscal year 1993-94, the Chancellor's Office has not routinely inspected the CPAs' work to ensure that districts are complying with the 50 percent law. Unless the Chancellor's Office strengthens its audit procedures and begins monitoring the CPAs, districts will continue to report inaccurately the level of spending they devote to instructor salaries.

RECOMMENDATIONS

To ensure that districts are accurately reporting their compliance rate under the 50 percent law, the Chancellor's Office should take these steps:

- Clarify its instructions.
- Provide the districts with regular training on compliance.
- Discontinue its existing practice of excluding noninstructional activities not enumerated in the 50 percent law or seek an opinion from the attorney general to support its interpretation of the law as reflected in regulations.
- Expand suggested audit procedures for district CPAs to detect errors in risky areas, such as faculty reassignments and exclusions from current educational expenses.
- Perform routine, independent checks of the work CPAs do for the districts.

AGENCY COMMENTS

The Chancellor's Office generally agrees with our recommendations, with the exception of our recommendation relating to the treatment of ancillary services. The Chancellor's Office disagrees with us on the treatment of ancillary services, but states that it will present this issue to the 50 percent law task force for consideration as part of any legislative proposal for changing the law.

We also gave those districts falling below the 50 percent threshold an opportunity to respond to their specific findings. Their comments and our response begin at page 37. ■

INTRODUCTION

BACKGROUND

Since 1961, Section 84362 of the Education Code has required community college districts (districts) each fiscal year to spend 50 percent of their current educational expenses on salaries for classroom instructors. The impetus for this requirement, better known as the 50 percent law, was a report from the Senate Fact-Finding Committee on Governmental Administration, which found that districts were moving toward larger classes and greater administration and counseling expenditures, thus spending less money on classroom instruction. By requiring a specific level of spending on instructor salaries, the Legislature aimed to make classes smaller and improve classroom instruction.

Although the Legislature has since passed two other laws that have influenced instructor salaries, the 50 percent law has remained a constant requirement for districts. Most importantly, the 1977 Educational Employment Relations Act established the right of instructors to bargain collectively on issues concerning their wages; hours; and terms and conditions of employment, including class size. Also, 1988 legislation seeking to improve academic quality allows instructors to perform noninstructional duties relating to district governance without depriving them of their collective bargaining rights.

How districts implement the 50 percent law came under scrutiny last year when the Santa Monica College Faculty Association (faculty association) brought a legal suit against the Santa Monica district. The faculty association alleged that, for fiscal years 1995-96 to 1997-98, the district misclassified and miscategorized its expenditures to appear in compliance with the law and in doing so failed to spend 50 percent of its current educational expenses on instructor salaries. The district's administration, however, believes its computations were appropriate. In November 1999, the faculty association took its complaint to the California Community Colleges Chancellor's Office (Chancellor's Office) after a superior court judge dismissed the case. The judge stated that the faculty association must follow the administrative process set forth in state law before seeking relief from the courts. Although the Chancellor's Office did not

review Santa Monica's compliance with the 50 percent law for fiscal years 1995-96 to 1997-98, it subsequently concluded that Santa Monica's compliance rate for fiscal year 1998-99 exceeded 50 percent. Our review of Santa Monica's compliance rate for fiscal year 1998-99 begins on page 9.

After our audit started, the Chancellor's Office convened a task force to review the law and to suggest changes in regulations and other policies used to implement the law. The task force includes a range of interested parties—district administrators, faculty, Chancellor's Office staff, and students—and has met three times as of September 2000.

FIFTY PERCENT LAW CALCULATION

The law requires districts to compute their compliance with the 50 percent law each year using the calculation below and to submit their results as part of an annual financial and budget report to the Chancellor's Office by September 30.

Method for Calculating 50 Percent Law Compliance Rate

$$\frac{\text{Instructor Salaries}}{\text{Current Educational Expenses}}$$

Instructor salaries (the numerator) include salaries and fringe benefits for instructional aides and for instructors teaching students. The Chancellor's Office has a long-standing policy, which seems consistent with the intent of the law, that places 100 percent of each instructor's compensation in the category of instructor salaries, unless an instructor is released from regular duties or receives a stipend for administrative duties. For example, if some instructors are relieved of 20 percent of their classes to chair departments, 20 percent of their compensation should be accounted for as noninstructional and excluded from the numerator.

Basic components of the numerator

Instructor salaries

plus:	Instructional aide salaries
plus:	Instructor and instructional aide fringe benefits
less:	Portion of salaries and benefits related to noninstructional reassignments

Current educational expenses (the denominator) include all instructional and noninstructional salaries and benefits, plus supplies, equipment replacement, and other operating expenses. These expenses exclude capital items such as sites, buildings, and new equipment, whether bought or

leased. The law also recognizes that districts receive grants from state and federal governments that must be spent on specific activities, which are referred to as categorical programs. Since districts do not have discretion over how this money is spent, the law requires that expenditures relating to state and federal funding for categorical grants be excluded from current educational expenses. For example, districts must exclude expenditures of federal funds for programs under the Vocational and Applied Technology Education Act. Expenditures associated with revenues not subject to the requirements of the 50 percent law, such as state lottery revenues, are also omitted. Finally, the law allows districts to exclude costs for three specific noninstructional activities: student transportation, food services, and community services.

Basic components of the denominator

Total district expenditures

less:	Expenditures for sites, buildings, library books, media, and new equipment
less:	Expenditures for leasing sites, buildings, and equipment
less:	Expenditures for student transportation, food services, and community services
less:	Expenditures of state and federal funds for categorical grants
less:	Expenditures of revenues exempt from the 50 percent law

Proper accounting for specific components of instructional salaries and current educational expenses is essential because including inappropriate costs as instructor salaries or excluding appropriate educational expenses raises the reported compliance rate. When computing their compliance rates, districts are to use only expenditures that are either actual disbursements or that are recorded liabilities in the current fiscal year.

The Chancellor's Office requires districts to use uniform accounting codes and funds to account for their expenditures. For example, districts must account for expenditures of state and federal categorical grant moneys in a restricted subfund of their general fund. Likewise, districts are to use a capital projects fund to record most capital expenditures. Moreover, a common set of expenditure codes allows districts to identify other excludable expenses in the unrestricted general fund, such as those for community service activities. If districts use uniform funds and coding, they can easily extract expenditure information to calculate their compliance rates.

SCOPE AND METHODOLOGY

The Joint Legislative Audit Committee (committee) requested that we review how the Chancellor's Office implements the 50 percent law. The committee wanted to learn whether the

Chancellor's Office appropriately instructs districts on calculating their compliance with the law. The committee also asked us to determine if districts are accurately reporting their compliance with the law.

To determine if the Chancellor's Office has given districts appropriate directions for calculating their compliance rates, we compared its regulations, policies, and legal opinions to the law. We also interviewed staff in the Chancellor's Office and reviewed documents to evaluate their monitoring efforts. Since the Chancellor's Office relies heavily on Certified Public Accountants (CPAs) who contract with the districts to identify and report noncompliance with the 50 percent law, we reviewed work papers for those CPAs who had performed audit procedures for our sample of districts.

To assess whether districts were accurately computing their compliance rates, we visited 10 districts, including Santa Monica, which represent a cross section of urban, suburban, and rural areas. We tested expenditure transactions for correct coding, traced expenditures to accounting records, reviewed adjusting entries and interfund transfers, assessed the support for cost allocations, and reviewed expenditure types for proper inclusion in, or exclusion from, the 50 percent law computation. Taking into account errors noted in our testing, we then recalculated the compliance rate for each district. ■

AUDIT RESULTS

DISTRICT CALCULATIONS OF COMPLIANCE RATES CONTAIN ERRORS

State law requires that community college districts (districts) spend 50 percent of their current educational expenses on instructor salaries each fiscal year. However, 6 of the 10 districts we visited did not meet the 50 percent requirement for fiscal year 1998-99, despite reporting compliance with the law in annual reports to the California Community Colleges Chancellor's Office (Chancellor's Office). To reach the 50 percent threshold, we estimate that the 6 noncompliant districts should have spent an additional $10 million on instructional salaries. The following table gives our results for the 10 districts:

TABLE

Comparison of Compliance Rates for Tested Districts Fiscal Year 1998-99

Community College District	Reported Compliance Rate	Bureau's Adjusted Compliance Rate
Noncompliant		
Allan Hancock	50.17%	43.02%
Kern	50.65	43.21
Mt. San Jacinto	51.21	44.92
Peralta	50.01	49.18
Santa Monica	52.70	47.20
West Hills	53.17	37.80
Compliant		
Contra Costa	54.01	54.03
Los Rios	54.10	53.33
San Diego	54.70	53.04
South Orange County	55.27	54.28

Source: Annual Financial and Budget reports filed with the California Community Colleges Chancellor's Office and Bureau of State Audits' calculations.

Note: The Appendix provides more detail on the amounts spent on instructor salaries and current educational expense as well as the Bureau of State Audits' audit adjustments.

Districts made a variety of errors in the methods used to calculate compliance with the 50 percent law. Though not all of the errors caused districts to fall below the 50 percent threshold, none of the 10 districts was error-free. The reported compliance rates were overstated by either including inappropriate costs as instructor salaries or excluding appropriate costs from current educational expenses. Most of the errors fit into the following two categories:

- Increasing instructor salaries by including costs for noninstructional assignments.

- Reducing current educational expenses by excluding (1) some normal operating costs, (2) district matching of categorical programs, and (3) district spending on noninstructional activities that should have been included.

By failing to correctly compute their compliance rates, districts are demonstrating a lack of clarity in understanding the law and the Chancellor's Office's instructions. In a few cases, incorrect district policies or decisions to include or exclude certain costs gave rise to errors. In other instances, districts could not substantiate the adjustments they made to accounting data for reported costs or they made mistakes in compiling and coding expenditures. Because of these various errors, district calculations of compliance with the 50 percent law are quite inconsistent.

Districts Incorrectly Categorized Salaries and Benefits When Calculating Instructor Salaries

Eight of 10 districts incorrectly included salaries and benefits for noninstructional duties in instructor salaries.

In fiscal year 1998-99, 8 of the 10 districts reviewed overstated the amount they spent on instructor salaries by incorrectly categorizing salaries and benefits related to noninstructional assignments. In the most significant case, a district overstated instructor salaries and benefits by more than $1 million because of a misguided district policy to include virtually all instructor reassignments in instructional salaries, regardless of the nature of the reassignment. In other cases, one district made coding errors that caused overstatements, and another district decided to recode administrative salaries as instructional salaries, even though personnel documents indicate the salaries were paid for administrative duties.

Santa Monica recorded almost all instructor reassignments as instructional, contradicting the Chancellor's Office policy and causing a $1.4 million overstatement of instructor salaries.

The Chancellor's Office has a long-standing policy that places the entire salary of an instructor in the category of instructor salaries unless he or she is released from regular duties or paid a stipend to perform administrative duties. The Chancellor's Office directs districts to exclude the reassigned portion of the instructor's pay from instructor salaries. For example, if an instructor is reassigned as the chair of a department and, therefore, spends only half of his or her normal time teaching, the portion of his or her salary related to department chair duties is accounted for as noninstructional and excluded from instructor salaries. However, the Santa Monica district categorizes almost all instructor reassignments as instructional, contradicting the Chancellor's Office policy. This means that the district allocates to instructor salaries 100 percent of the salaries and benefits for faculty splitting their time between instructional and noninstructional positions, including department chairs, program coordinators, or faculty senate members. Consequently, the Santa Monica district overstated its instructor salaries by almost $1.4 million. When the Chancellor's Office reviewed Santa Monica's compliance rate for fiscal year 1998-99, it told the district that it was incorrect to include in instructor salaries that portion of salaries paid for reassignments to administrative and noninstructional duties. The Chancellor's Office also reaffirmed its policy to the district.

The Santa Monica district also inappropriately included in its instructor salaries $934,000 for employee salaries and benefits for noninstructional staff. During the year, the district uses a holding account to capture costs it is unsure how to code. At year-end, this account held benefits that had not yet been distributed to the proper benefit accounts. The district told us that it analyzed a few of the transactions for the benefits in the holding account and, on this basis, it determined that all of the costs related to instructor salaries. However, the district was unable to provide us evidence to support its assertion. Because it is highly unlikely that 100 percent of the benefits costs in the holding account were for instructors or instructional aides, we reallocated these costs according to the distribution of benefits throughout the year, attributing $428,000 less than the amount originally assigned to instructor salaries. The district also incorrectly included in its calculation $506,000 related to salaries and benefits for noninstructional staff working in academic programs. In this case, the district is clearly violating the 50 percent law because the law allows districts to include

only salaries and benefits for instructors and instructional aides in instructor salaries. We thus removed the entire $506,000 from this category.

Though not as wide-ranging, calculation errors at other districts were still significant. The West Hills district, for example, overstated instructor salaries by including salaries and benefits related to programs, such as the Course and Curriculum Development program, which the Chancellor's Office does not allow in the calculation of the compliance rate. According to the district, this $87,857 error resulted from a misunderstanding of the instructions from the Chancellor's Office. A different miscalculation resulted in a $150,000 error at the Kern district. Specifically, the district increased the amount it reported for instructor salaries when it reclassified salaries previously coded as administrative in its accounting system. The district should have based an adjustment of this type on personnel records, but its records did not support the reclassification. When we asked the district about its rationale for that action, we were told that a former assistant chancellor scanned the list of administrator salaries and made adjustments using her knowledge of faculty assignments. The district's personnel records did not support her recollection of faculty assignments, however, so we removed these adjustments from instructor salaries.

Finally, we found that the Peralta district's failure to accrue liabilities and related expenditures for unused vacation and for retroactive pay adjustments may have resulted in under- or overstatement of instructor salaries and current educational expenses. We did not adjust for these errors because the Chancellor's Office directs districts to base their 50 percent calculation on actual disbursements and recorded liabilities. Moreover, the failure to accrue liabilities may have a minimal effect on expenditures and, therefore, on the district's compliance rate because the current year's accrual must be offset by the amount that should have been accrued in the prior year.

Districts incorrectly removed costs for building and equipment maintenance from current educational expenses.

Districts Inappropriately Excluded Some Operating Costs From Their Current Educational Expenses

Rather than overstating the amount of instructor salaries, some districts overstated their compliance rates by excluding normal operating costs from their current educational expenses. Reducing current educational expenses (which, as stated

previously, represents the denominator of the compliance calculation) lowers the total of instructor salaries (designated by the numerator) needed to reach the 50 percent threshold.

The law allows districts to exclude expenditures for purchases or leases of capital items—sites, buildings, and new equipment—from the calculation of their current educational expenses, but does not allow districts to exclude operating costs related to capital items. Yet 3 of the 10 districts reviewed not only excluded purchase and leases of capital items as allowed, they excluded operating costs to maintain those items. For example, because the Kern district misunderstood the law, it reduced current educational expenses by about $3.9 million for upkeep on sites and buildings, including personnel and supplies for grounds maintenance and custodial services. On a smaller scale, the Allan Hancock district reduced current educational expenses by more than $150,000 for maintaining and repairing various office machines, elevators, and computers that were under service agreements.

Because it misunderstood the law, one district incorrectly reduced current educational expenses by nearly $3.9 million.

In addition, 9 of the 10 districts incorrectly reduced their current educational expenses by including costs for supplies or services in accounts designated for new equipment purchases or leases. For example, the Santa Monica district coded to its rents and leases account items that did not qualify as equipment. The Budget and Accounting Manual issued by the Chancellor's Office defines equipment as tangible property with a purchase price of at least $200 and a useful life of more than a year. The manual also requires districts to account for payments for telephone, waste disposal, or other similar expenses, including contracts for these services, as utilities and housekeeping services. These costs should be included in current educational expenses as regular operating costs. However, the Santa Monica district categorized as leased equipment contracts for uniforms and trash removal, and even food for a luncheon. These errors inappropriately reduced its current educational expenses by $8,886.

Some Districts Lowered Their Current Educational Expenses Through Inappropriate Exclusions for Categorical Programs and Errors in Reporting

Although the law directs districts to exclude from their calculations of current educational expenses expenditures of state and federal funds received for categorical programs, 5 of

the 10 districts reviewed also excluded their matching funds for these programs. For example, the West Hills district did not count in its current educational expenses district-funded administrative salaries and operating expenses it attributed to a mix of categorical and ancillary programs. We estimate that $1.2 million of this reduction relates to district funding of categorical programs. In another example, the Santa Monica district excluded $473,525 in transfers from its unrestricted general fund to cover the costs of disabled students' programs and services and of college work-study programs.

While some districts argue that they should exclude all expenditures for categorical programs from current educational expenses, the Chancellor's Office interprets the exclusion to apply only to expenditures for federal and state funds, a position that is consistent with the law. State and federal categorical programs may require a district to agree to match funds as a condition of receiving aid. Often these matching amounts are funded by the district's decision to direct discretionary funds to the program. Presumably, the district retains the authority to discontinue dedicating unrestricted funds to the program, at which point it would become ineligible to receive state and federal funds. Therefore, district matching funds for categorical programs should remain in the calculation of current educational expenses and further the intent of the law to make 50 percent of the district's discretionary funds available for instructional salaries. It appears, however, that the districts do not understand how to treat their spending on these programs, thus underscoring the need for greater guidance from the Chancellor's Office.

Two other districts correctly excluded expenditures as the law requires but then subtracted some of the same costs again under different categories. For example, the Mt. San Jacinto district correctly compiled its accounting data to remove expenditures for community services from instructor salaries and current educational expenses. It then removed some of the same costs again further down on the form. This error reduced the district's current educational expenses by $710,000.

Regulations Adopted by the Board of Governors Allow Districts to Exclude Ancillary Program Costs Not Explicitly Stated in the Law

The law allows districts to specifically exclude all expenditures related to three specific noninstructional activities—student transportation, food services, and community services—from their current educational expenses. The Board of Governors of the California Community Colleges (board) has, however, adopted regulations allowing districts to exclude other noninstructional activities such as ancillary services for bookstore, child development, farm, parking, and student housing operations, even though the law does not provide a broad exemption for ancillary services. Generally, districts have discretion over the money spent from unrestricted general funds. Excluding unrestricted general funds that support ancillary services not named in the law incorrectly reduces the district's current educational expense and yields a compliance rate that is higher than it should be.

Following the regulations, all of the reviewed districts excluded some costs related to ancillary services not enumerated in the law. As shown in the Appendix, our adjustments for these costs further reduced the compliance rates for those districts that were already below the 50 percent threshold. For example, the Santa Monica district removed from its current educational expenses 25 percent of its costs for campus security and grounds maintenance and 10 percent of its custodial services costs, stating that these costs relate to its parking, community services, student lounge, and club areas. Although the district told us that it based its allocation on information such as dispatch logs, call sheets, and custodial hours devoted to these activities, it was unable to produce evidence to support its assertion. If the district had adequate documentation, the portion relating to community services would have been a valid exclusion.

Districts incorrectly excluded costs for parking, student club, and theater programs paid for by unrestricted general funds.

In another twist on the treatment of ancillary services, the Allan Hancock district excluded approximately $1.2 million in general fund transfers to subsidize its performing arts conservatory. The conservatory supports a fully accredited vocational training program for aspiring actors and theater technicians. The district stated that the transfer was excludable because the conservatory program is a community service; however, the Chancellor's Office informs us that it would generally expect

theater operations to be classified as an ancillary, not a community, service. We therefore added the transfer back to current educational expenses since it represents an ancillary service not excludable under the law.

The Chancellor's Office argues that the Legislature intended to exclude all ancillary services from the current educational expense calculation. The Chancellor's Office was, however, unable to provide us with any legislative history to support regulations governing these activities, which depart from the plain meaning of the law. Nonetheless, the Chancellor's Office believes that the general authority of the board to adopt regulations pertaining to districts provides the board with authority to adopt this interpretation based on its understanding of legislative intent. Moreover, it asserts that if challenged, this long-standing administrative construction would be given deference by the courts. We disagree. It is likely that a court would favor a strict interpretation of the exclusions given that the law enumerates specific activities for exclusion and does not include a catchall category for "other" similar activities. Moreover, including unrestricted general fund expenditures and transfers to subsidize noninstructional activities, such as ancillary services not enumerated in the law, as part of a district's current educational expenses, furthers the legislative goal of providing more funding for instructional programs.

The Chancellor's Office's Definition of Equipment Conflicts With the Legislature's Intent to Exclude Only New Equipment

Vague definitions of new and replacement equipment led districts to categorize 49 percent to 100 percent of equipment purchases as new.

The 50 percent law allows districts to exclude new equipment from their current educational expenses; replacement equipment is not excludable. Because districts variously interpret the Chancellor's Office's definition of new and replacement equipment, they treat equipment expenditures inconsistently. The 10 districts visited categorized 49 percent to 100 percent of their equipment purchases as new, rather than replacement, equipment.

The Budget and Accounting Manual's definition of additional, or excludable, equipment in effect during fiscal year 1998-99 covered not only new equipment, but also equipment "of different quality or capacity." In interpreting this definition, one district read the manual's definition so broadly as to mean that

any difference in quality or function would allow it to exclude that equipment. It is reasonable to take into account quality and capacity differences when purchased equipment is very different in function from the equipment it is replacing. Computer equipment is a good example because old equipment rapidly becomes obsolete. However, applying such a broad interpretation to any difference in quality and capacity effectively negates the distinction the Legislature tried to draw between new and replacement equipment.

In an attempt to clarify this matter, the Chancellor's Office revised its definition of replacement equipment effective July 2000. Its new definition classifies equipment purchases as new unless they are *identical* to the equipment replaced. The Chancellor's Office assures us that the intent of its revision was not to eliminate all replacement equipment; however, this definition is far enough from the commonly understood meaning of "replacement" that a court could find it invalid. Until the Chancellor's Office develops better definitions for new and replacement equipment, it risks negating the Legislature's intent by making application of the law impossible.

THE CHANCELLOR'S OFFICE NEEDS TO INCREASE ITS OVERSIGHT TO ENSURE DISTRICTS COMPLY WITH THE LAW

Although the Chancellor's Office believes that all districts comply with the 50 percent law, 6 of the 10 districts we reviewed did not.

Because the Chancellor's Office offers the districts little guidance or training for calculating compliance with the law, districts are incorrectly interpreting the law and making errors in their calculations. The Chancellor's Office also lacks adequate oversight to detect mistakes: although 6 of the 10 districts reviewed did not comply with the 50 percent law, the Chancellor's Office was unaware of any district's noncompliance. For oversight, the Chancellor's Office relies primarily on the Certified Public Accountants (CPAs) who contract with the districts to ensure that district reports are accurate. The Chancellor's Office provides the CPAs with suggested audit procedures to determine compliance, but these procedures are inadequate and some CPAs do not follow them. Moreover, because it does not routinely monitor the CPAs to ensure their work is adequate, the Chancellor's Office cannot ensure that districts are complying with the 50 percent law.

The Chancellor's Office Gives the Districts Little Guidance

The Chancellor's Office has provided little direction to districts and they seldom seek guidance.

The Chancellor's Office gives districts its manual and one page of instructions for completing their analysis of compliance with the law. Beyond these minimal tools, the Chancellor's Office has not provided the districts training on calculating their compliance. The Chancellor's Office states that it has not done more because districts reported that they were in compliance and never expressed a need for training because they receive training at meetings of the California Association of School Business Officials. In addition, it says that insufficient funding since the early 1990s contributed to its inability to provide more training and that it is seeking additional resources to increase its efforts for training and other accountability issues.

Proper training can ensure that districts clearly understand how to calculate and report their compliance with the 50 percent law. Presently, when the districts have questions about interpreting the law, they generally develop their own rationale or seek guidance from other districts. For example, the West Hills district, which was noncompliant in fiscal years 1987-88 to 1991-92, developed a method of allocating costs to programs it considered excludable from current educational expenses. The method lowered the district's expenses and improved its compliance rate. However, because the district did not ask the Chancellor's Office if its allocations were appropriate, and because the district could not demonstrate that the allocations were consistent with the law or the Chancellor's Office's instructions, we concluded that this methodology was inappropriate.

The Chancellor's Office Fails to Detect Districts' Noncompliance

Rather than actively ensure that the districts correctly report their compliance, the Chancellor's Office accepts as accurate the certification by CPAs who contract with the districts. Our review shows, however, that the procedures CPAs are to use and their audits are not sufficient to reveal the numerous errors districts make when they calculate their ratios of instructor salaries to current educational expenses. Consequently, the Chancellor's Office mistakenly believes that all districts comply with the law, when in fact 6 of the 10 districts we reviewed did not meet the required 50 percent ratio.

To gain assurance that the districts' compliance rates are accurate, the Chancellor's Office requires that contracted CPAs include in their reports on state compliance an expression of

The Chancellor's Office's procedures for CPAs are limited to these tasks:

- Identifying instructional aides who are included in instructor salaries and reviewing personnel records to determine if such employees are actually assigned to these positions.
- Determining whether adequate documentation exists to support allocations of administrative staff salaries to instructor salaries.
- Examining new equipment expenditures to determine whether they are properly reported.
- Determining whether expenditures of state and federal funds received for categorical programs are excluded from the current educational expenses.

positive assurance for those items tested and negative assurance for untested items. The Chancellor's Office has developed suggested audit procedures for the CPAs to follow when determining the district's compliance. These procedures, however, are inadequate for detecting errors in risky areas such as the coding of reassignments for classroom instructors or the exclusion of items from current educational expenses.

As mentioned earlier, the 50 percent law allows districts to exclude new equipment purchases from their calculations. The Chancellor's Office suggests audit procedures that require CPAs to determine whether new equipment expenditures were properly reported. To make this determination, we would expect the CPAs to select a sample of expenditures from the new equipment account and examine supporting documentation, but the procedure does not explicitly require the CPAs to select such a sample to detect errors. Using this sampling method ourselves, we found that the Los Rios and Kern districts included $1,449 and $176,800, respectively, of expenditures actually spent on supplies in their new equipment accounts. Also, the procedures used by the CPAs for the Allan Hancock, Contra Costa, Kern, Los Rios, Mt. San Jacinto, Peralta, San Diego, and West Hills districts were not sufficient, consisting primarily of verifying that separate accounting codes were used for new and replacement equipment and that account totals were properly included in the report, or relying on statements made by district staff.

Moreover, CPAs for the South Orange County district failed to demonstrate that they had completed any of the Chancellor's Office's procedures related to the 50 percent law. Also, the CPA for the Los Rios district erroneously concluded that the district does not include instructional aides in its calculation of instructor salaries. As a result, the CPA failed to perform a related procedure to verify the accuracy of those instructional aides that were included in instructor salaries.

Some CPAs contend that the test of controls and substantive procedures they use to render an opinion on district financial statements are substitutes for Chancellor's Office procedures relating to the 50 percent law. However, when contracting for

district audits, CPAs agree to perform the procedures shown in the text box or document why they did not perform them. In addition, since the CPAs are performing an audit that includes an audit of federal funds in accordance with the federal Office of Management and Budget's Circular A-133, the CPAs agree to follow more rigorous working paper standards than those required by the American Institute of Certified Public Accountants. They agree to follow supplemental working paper standards required by generally accepted government auditing standards.

One of these supplemental standards states "Working papers should contain sufficient information to enable an experienced auditor having no previous connection with the audit to ascertain from them the evidence that supports the auditors' significant conclusions and judgments." As a result, the CPAs working papers should have included the performance of the specific procedures shown in the text box or stated how the CPAs traditional financial statement audit procedures were expanded to explicitly meet the Chancellor's Office's expectation. Many of the CPAs working papers that we reviewed contained neither.

CPAs working papers often failed to demonstrate the completion of suggested audit procedures.

Records in the Chancellor's Office indicate that the CPAs for the 10 districts we reviewed, as well as CPAs for the other 61 districts, reported that all districts were in compliance with the law. However, our findings contradict these reports. Prior to fiscal year 1993-94, the Chancellor's Office says it performed spot checks of the work performed by CPAs, but due to budget restrictions and staffing cutbacks, it discontinued these reviews. In the fall of 1999, the Chancellor's Office hired an additional employee and expects to resume its spot checks in fiscal year 2000-01. Until the Chancellor's Office strengthens its audit procedures and begins monitoring CPAs, it has no way of ensuring that districts are complying with the law.

The Chancellor's Office may impose corrective actions against noncompliant districts, such as requiring them to increase spending on instructor salaries above 50 percent in the subsequent year. It does not, however, have a formal policy or procedure to sanction CPAs who perform substandard procedures or certify that districts are compliant when later reviews by the Chancellor's Office or other auditors find otherwise. Such sanctions, which might include prohibiting the districts from contracting with the CPA and, if necessary,

reporting the CPA to the State Board of Accountancy, could further ensure that CPAs adequately perform their work and that districts are in compliance with the law.

RECOMMENDATIONS

To ensure that districts are accurately reporting their compliance rate under the 50 percent law, the Chancellor's Office should take these actions:

- Clarify its instructions for properly accounting for plant and equipment leases, district matches for categorical programs, and cost allocations.
- Revise its definitions of new and replacement equipment to ensure that it can implement the law. If it cannot arrive at a suitable definition, it should seek a change in the law to treat new and replacement equipment similarly.
- Provide the districts regular training on complying with the 50 percent law.
- Seek an amendment to existing regulations to discontinue the practice of excluding from the compliance calculation noninstructional activities not enumerated in the law or seek an opinion from the attorney general to support the interpretation of the law as reflected in the regulations.
- Expand suggested audit procedures for district CPAs to detect errors in risky areas, such as instructor reassignments and exclusions from current educational expenses.
- Perform routine, independent checks of the work CPAs do for the districts.
- Establish a policy or procedure to address instances when it finds that CPAs audit work is substandard.
- Continue working with its task force so districts have an opportunity to suggest changes in regulations or policies for improving the implementation of the law.

To gain a better understanding of the Chancellor's Office's implementation of the 50 percent law and to suggest changes to its regulations and policies, districts should actively participate in the Chancellor's Offices task force.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,

Steven M Hendrickson
for

ELAINE M. HOWLE
State Auditor

Date: October 12, 2000

Staff: Joanne Quarles, CPA, Audit Principal
James Sandberg-Larsen, CPA
Phillip Burkholder, CPA
Theresa M. Carey
Kathryn Lozano, CPA
Ronald Sherrod

APPENDIX

Bureau of State Audits' Recalculation of Compliance Rates

	District Reported Figures	Reported Compliance Rate *	Bureau Adjustments for Nonancillary Programs	Adjusted Figures Before Ancillary Programs	Adjusted Compliance Rate *	Bureau Adjustments for Ancillary Programs †	Figures Including All Bureau Adjustments	Adjusted Compliance Rate *
Allan Hancock								
Instructor salaries	$11,034,987	50.17%	($45,308)	$10,989,679	47.85%		$10,989,679	43.02%
Current educational expense	21,995,719		971,756	22,967,475		$2,578,390	25,545,865	
Contra Costa								
Instructor salaries	54,252,285	54.01	(167,907)	54,084,378	54.49		54,084,378	54.03
Current educational expense	100,448,663		(1,191,406)	99,257,257		835,343	100,092,600	
Kern								
Instructor salaries	24,700,214	50.65	(604,559)	24,095,655	43.98		24,095,655	43.21
Current educational expense	48,769,212		6,022,506	54,791,718		972,346	55,764,064	
Los Rios								
Instructor salaries	64,925,513	54.10		64,925,513	53.39		64,925,513	53.33
Current educational expense	120,019,688		1,582,646	121,602,334		151,124	121,753,458	
Mt. San Jacinto								
Instructor salaries	8,267,940	51.21	(318,442)	7,949,498	45.28		7,949,498	44.92
Current educational expense	16,146,721		1,408,782	17,555,503		140,784	17,696,287	
Peralta								
Instructor salaries	30,476,298	50.01	(160,185)	30,316,113	49.61		30,316,113	49.18
Current educational expense	60,945,590		165,426	61,111,016		530,061	61,641,077	
San Diego								
Instructor salaries	61,364,846	54.70	(615,990)	60,748,856	53.60		60,748,856	53.04
Current educational expense	112,180,833		1,147,985	113,328,818		1,209,494	114,538,312	
Santa Monica								
Instructor salaries	34,466,838	52.70	(2,338,000)	32,128,838	48.96		32,128,838	47.20
Current educational expense	65,401,455		216,427	65,617,882		2,445,439	68,063,321	
South Orange County								
Instructor salaries	38,511,624	55.27	6,050	38,517,674	54.67		38,517,674	54.28
Current educational expense	69,683,669		772,664	70,456,333		511,273	70,967,606	
West Hills								
Instructor salaries	4,981,024	53.17	(125,229)	4,855,795	47.45		4,855,795	37.80
Current educational expense	9,368,316		864,264	10,232,580		2,612,272	12,844,852	

* We arrived at these totals by dividing instructor salaries by current educational salaries.

† Bureau adjustments for ancillary programs are for expenditures the districts excluded per regulations adopted by the California Community Colleges Board of Governors although the programs are not specifically identified as excludable in state law. We disagree with the interpretation and have added such expenditures back to current educational expenses.

BEST COPY AVAILABLE

Agency's comments provided as text only.

California Community Colleges
Chancellor's Office
1102 Q Street
Sacramento, CA 95814

September 27, 2000

Elaine M. Howle
State Auditor
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear Ms. Howle:

On behalf of the California Community Colleges, I appreciate the opportunity to provide comments on your report on the California Community Colleges implementation of Education Code section 84362, the 50 Percent Law. The Board of Governors and the Chancellor's Office are committed to fulfilling their responsibilities in successfully implementing the 50 Percent Law to meet the needs of the contemporary community college system.

As you know, the essential provisions of section 84362 were enacted when the community colleges were part of the K-12 system. In many ways section 84362 does not fully reflect the complexities of California's community colleges as a component of higher education. Such a legislative restriction is not part of the controlling authority for either the California State University or the University of California. To date, we have not identified another state with a similar restriction on its community colleges or other institutions of higher education.

Nonetheless, the law is in place in California and charges the Board of Governors with enacting regulations necessary for its implementation. The Board of Governors first adopted regulations to implement section 84362 in 1977. Since the Chancellor's Office is a very small agency with limited staff resources it was recognized that it would be impossible for the agency to control the budgetary and financial decisions of the community college districts. Doing so would also be contrary to the expressed intent of the Legislature that the regulations of the Board of Governors maintain, to the greatest degree possible, local authority and control over the administration of community colleges. (Ed. Code, § 70901(c)). As a result, the Board designed an enforcement mechanism through reporting and audits that placed much of the responsibility for enforcement of section 84362 at the local level and which provided for Chancellor's Office review on an exception basis.

This office expended considerable resources in the 1980s to train district staff on the 50 Percent Law and to perform routine reviews of district independent audits. In the early 1990s, the

Chancellor's Office budget was reduced approximately 30%. In allocating scarce resources we chose to rely upon local enforcement and until last year, we had not received any complaints or other information which would cause us to question the accuracy of the annual 50 Percent Law reporting by the community college districts.

We recognize, however, that we are a system of community colleges and that we could do more to provide leadership to the system on this issue. As a result, I convened and am personally chairing a 50 Percent Law Task Force, consisting of representatives of faculty unions, classified staff, the Academic Senate, College Presidents, and College Business Officers, to consider areas for reform to section 84362 and the Board's implementing regulations including the system Budget and Accounting Manual (BAM). The 50 Percent Law has not undergone a substantive policy review since AB 1725 was enacted in 1988 (ch. 973, Statutes of 1988). In AB 1725 the Legislature recognized that the California Community Colleges are a system of higher education and established a process for participatory governance in that system by including faculty, staff, and students in local and statewide policy making.

The Task Force is looking at what should be contained in the numerator, the salaries of classroom instructors (SCI), and what should be contained in the denominator, the current expense of education (CEE), in the 50 Percent Law calculation. It is also considering reforms to the relevant provisions of the Board's regulations, including enforcement provisions, and the reporting requirements of the BAM. At this time the work of the Task Force is ongoing and will consider the findings and recommendations made in your report.

The following are our specific comments about the findings and recommendations of your report:

Recommendation 1

The recommendation is that the Chancellor's Office clarify its instructions for BAM for proper accounting for leases of plant and equipment, district matches for categorical programs, and cost allocations.

The report expresses the view that the BAM and the instructions for 50 Percent Law reporting are confusing and lead to inconsistent application of the law and inaccurate reporting by districts. Specifically, it was found that districts were not properly applying the rules regarding the reporting of reassigned time and the general fund match to categorical programs. The report also indicates that when districts reported on their compliance with the 50 Percent Law they frequently made manual adjustments to their accounting entries. However, in many cases the Districts were not able to provide evidence that the manual adjustments were valid.

Response: We do not necessarily agree that the BAM and our instructions are confusing, but we think the recommendation has merit and will take action to eliminate any ambiguity that may exist in provisions in the BAM or in our instructions which the audit has revealed are being

misapplied by the Districts. It was also our experience during our recent review regarding the Santa Monica Community College District that some BAM provisions were being misinterpreted. Your audit has revealed additional areas of misunderstanding regarding the proper application of the BAM. We accept responsibility for ensuring that requirements in the BAM are clear, understood, and are being properly applied by the districts. We will take this matter to the 50 Percent Law Task Force or use other appropriate consultation mechanisms to discuss what improvements need to be made in this regard.

We would clarify that on the issue of manual adjustments it is our understanding that there is nothing improper regarding the use of manual adjustments per se but that the audit revealed that some adjustments were being made without proper substantiation. To the extent that any audit exceptions are the result of a lack of evidence to support the manual adjustments, this appears to be something that we can deal with through our instructions to independent auditors and districts and our review of the district audits, as discussed below.

Recommendation 2

The recommendation is that the Chancellor's Office revise the definitions of new and replacement equipment in the BAM to assure that it implements the law. The report also recommends that, if the Chancellor's Office cannot arrive at a suitable definition, it should seek a change in the law to treat new and replacement equipment the same.

The Bureau has found that the definitions in BAM regarding the designation of equipment as replacement or new are such that there is a great deal of variability in how the definitions are being interpreted and consequently how equipment purchases are being reported. As we understand it, your principle concern in this area is that some districts are interpreting the BAM so that no equipment purchases are reported as replacement. As a result, the recommendation is that the definition be clarified to provide greater guidance or basis for distinguishing between new and replacement equipment.

Response: Section 84362 specifically references BAM Object of Expenditure 6000 in relation to the exclusion of new equipment from CEE, thereby endorsing the definition contained in the BAM. However, we agree that the BAM should not be interpreted in a way that leads districts to regularly report that none of the equipment they purchase is "replacement equipment." As a result, we agree to clarify the BAM so that replacement equipment is properly reported or seek a change to the statute. The audit has helped to reveal the practices of the districts with respect to new and replacement equipment and the difficulties the districts have in applying the definition in the BAM to their actual equipment purchases. Again, we will take the matter up in the 50 Percent Law Task Force or discuss it through other appropriate consultation mechanisms.

Recommendation 3

The recommendation is that the Chancellor's Office provide the districts with regular training on complying with the 50 Percent Law.

The report concludes that there is insufficient training by the Chancellor's Office for district staff responsible for 50 Percent Law reporting.

Response: We accept the information provided by the finding, and agree to address the need for training. We are an agency of very limited resources. Although we have recently received increasing financial support from the Legislature, we are still below 1989 funding levels with more responsibility and work than the agency had at that time. Nonetheless, we recognize that we need to do more in this area and even before your report was issued we had submitted a budget request for additional resources that will permit us to assign more staff to work on program reviews and technical assistance in this and other areas. In the meantime, we will make an effort to identify ways for us to provide some training, such as interacting with or making presentations for the Chief Business Officers and other staff responsible for district accounting and 50 Percent Law reporting.

d. Recommendation 4

The recommendation is that the Chancellor's Office seek an amendment to existing regulations to discontinue the practice of excluding from the compliance calculation noninstructional activities not enumerated in the 50 Percent Law or seek an Attorney General opinion to support the interpretation of the law as reflected in the regulations.

Response:

With respect to this issue, there appears to be a legitimate good faith difference of opinion between our agencies regarding the authority of the Board of Governors. As explained below, we think that the Board of Governors has the authority to exclude from CEE ancillary services as defined in the BAM. However, we will take this issue to the 50 Percent Law Task Force and consider it as part of any legislative proposal to modify section 84362.

We understand the position of the Bureau to be that general fund expenditures for what the BAM classifies as ancillary activities (expenditures related to bookstores, child development centers, farm operations, food services, parking, student co-curricular activities, and other ancillary student services) are not, except for food services and student transportation, properly excluded from CEE because they are not specifically identified as exclusions in section 84362.

It is our position (see Legal Opinion 00-25, attached) that the Board of Governors has the authority to interpret Education Code section 84362 by the enactment of regulations which includes exclusions from the 50 Percent Law not specifically identified in statute. This authority derives from the grant of authority to the Board contained in section 84362 itself, from the general power vested in the Board to provide leadership and direction to the community colleges through the enactment of regulations, and the grant of authority to interpret all laws affecting community colleges. (Ed. Code, § 70901.)

An independent third party, the Office of Administrative Law (OAL) reviewed and approved the regulations. OAL is charged with reviewing state agency regulations for a number of criteria, including whether the agency has the legal authority to adopt the regulations. OAL approval of

the Board regulations that excluded ancillary services from CEE indicates that OAL understood that the Board had the authority to adopt the regulations.

We understood that the intention of the Legislature in excluding food services and student transportation from CEE was to exclude those services that were not instructionally related and therefore should not have a corresponding percentage of revenues going to support instruction by paying for the salaries of classroom instructors. Food service and student transportation are easily recognizable as non-instructional components of a typical K-12 environment. However, in addition to food services and student transportation community colleges actually have other non-instructional activities such as bookstores, child care centers, farms, parking structures, intercollegiate athletics, etc. There is nothing in the legislative record to indicate that these activities were considered by the Legislature in 1975 when the law was last seriously reviewed and the statutes were rewritten in more or less their present form.

The exclusion of ancillary services from CEE is the longstanding practice of the Board of Governors. The regulations were first adopted in 1977 in public hearings. Section 84362 has been amended several times since then, yet there has been no legislative action disapproving the interpretation of the Board regarding ancillary services. Such a longstanding interpretation by an agency charged with the implementation of a statute is entitled to great weight.

In addition, we would note that there are other situations upon which 84362 is silent but are nonetheless real issues at a contemporary community college. For example, 84362 is silent as to the practice of instructors being reassigned from their classroom duties to perform other college functions. The risk is that the salaries of classroom instructors may become overstated by faculty who are not in fact engaged in instructional activities. Because we think that the intention of the Legislature was that salaries of classroom instructors should be related to instruction, we have interpreted the statute so that reassigned time is not included in the definition of salaries of classroom instructors. To the extent that we have the authority to look beyond the plain language of the statute and to find that reassigned time should not be included in the salaries of classroom instructors, we also have the authority to determine that ancillary activities should not be included in CEE.

For all of the above reasons, we think that the Board of Governors has the authority to exclude the ancillary services identified in the BAM from CEE. It appears that the Bureau's opinion is based solely upon principles of statutory construction but, as you know, there are always exceptions to such general rules and we think this is one of those exceptions.

Recommendation 5

Expand suggested audit procedures for district CPA's to detect errors in risky areas, such as instructor reassignments and exclusions from the current expense of education.

The report found that the independent district audits do not address all of the issues that the auditors should be testing for. In particular, you found that auditors are not required to test the exclusions the districts are claiming or test in the areas of frequent misinterpretation, such as reassigned time, new versus replacement equipment, etc.

Response: Until recently, no one has complained or provided information that would cause us to question the validity of the audits. We will take steps to focus the instructions to the auditors to test the exclusions and other areas of risk.

f. Recommendations 6 and 7

Recommendation 6 is that the Chancellor's Office perform routine, independent checks of the work CPAs do for the districts.

Recommendation 7 is that the Chancellor's Office establish a policy or procedure to address instances when it finds that a CPA's audit work is substandard.

The report found that some district auditors do not follow existing audit guidelines and there are no procedures in place to oversee their work. It is noted that we no longer spot check the independent district audits and do not have procedures for taking action against auditors who fail to perform as required.

Response: The audit suggests that some CPAs may not be doing a thorough job, but we do not really know how widespread these problems are. Nevertheless, we agree to resume performing spot checks of the district audits to the extent permitted by the limited number of qualified staff currently available. As noted above, we have requested additional staff for the audits unit and will do more spot checks when we receive the additional staff.

In addition, where we determine that an audit has not been properly performed we will decline to accept the audit and return it to the district to provide an audit that is acceptable. We will continue to evaluate whether these actions are sufficient to improve the quality of the audits and consider other actions as required. We recognize that in extreme cases we do have the ability to report auditors to the Board of Accountancy.

Recommendation 8

The recommendation is that the Chancellor's Office continue working with the 50 Percent Law Task Force so that districts have an opportunity to suggest changes in regulations or policies for improving the implementation of the law.

Response: The 50 Percent Law Task Force is primarily an ad hoc body for consideration of the current policy issues associated with section 84362. It is intended to generate proposals in the next few months for reform including changes to the statute and to the Board's regulations. We will take your report to the Task Force and discuss with them recommendations for appropriate policy changes. Any recommendations made by the Task Force will be considered through our established consultation process and all districts and other interested parties will have a full opportunity for input. However, we do not anticipate maintaining the Task Force indefinitely.

We appreciate the courtesy and professionalism shown by your staff in the conduct of this audit. Please contact Gary Cook at (916) 327-6222 if you have any questions.

Sincerely,

(Signed by: Thomas J. Nussbaum)

Thomas J. Nussbaum
Chancellor

Legal Opinion O 00-25

ISSUE

You have asked whether the Board of Governors had legal authority to exclude "ancillary services" from the definition of the term "current expense of education" as set forth in Title 5, section 59204.

ANALYSIS

Education Code section 84362 (the 50 percent law) requires that each community college district devote at least 50 percent of its "current expense of education" (CEE) to the "salaries of classroom instructors." Section 84362 gives a complex definition of CEE which excludes, among other things, food services and student transportation. Section 84362 is silent regarding the treatment of other ancillary services such as parking, bookstores, athletics, etc.

However, Title 5, California Code of Regulations, section 59204(b) excludes all ancillary services by providing that the term "current expense of education" shall include "Object of Expenditures 1000 through 5000 for activity codes 0100 through 6700 as defined in the California Community College Budget and Accounting Manual . . . ." The community college Budget and Accounting Manual (BAM) categorizes ancillary services under activity codes beginning with 6900. Since these activity codes are not among those referenced in section 59204, that regulation effectively excludes all ancillary services from CEE.

Thus, your question is whether the Board of Governors had legal authority to exclude all ancillary services in section 59204. For the reasons set forth below, we conclude that it did.

First, we believe the principle embodied in section 84362 is that districts should devote at least 50 percent of the funds they spend on the educational enterprise to salaries of classroom instructors. The very term "current expense of education" emphasizes that the focus is on those expenses that relate to delivering education to students. As we observed in Legal Opinion 99-26:

> "Those activities included in Activity Code 6900, Ancillary Services (bookstores, child development centers, farm operations, food services, parking, student housing, student clubs, etc.) are excluded from the 50 percent law because they are largely supported by restricted revenues that cannot be used for other purposes and because such activities are not directly associated with instructional activities or administrative support.
>
> We think that Section 84362's specific exclusion of food services from CEE expresses the Legislature's intent that ancillary services were never intended to be included in the 50 percent law. It is important to remember that Section 84362 grew out of law that was primarily created for K-12 schools that for the most part

> do not have the kinds of ancillary services included in Activity Code 6900 which are common at most community colleges. If we were to hold that expenditures for ancillary services are to be included in CEE, this would mean that a district must devote 50 percent of the amount in question for salaries of classroom instructors. However, such a result would make no sense since ancillary services involve expenditures which are not directly associated with instructional or administrative support activities and are supported from restricted funds. In effect, we would be requiring districts to match 50 percent of these expenditures with additional funds for salaries of classroom instructors. We do not believe the Legislature ever envisioned such a result."

Second, the Board of Governors has been vested by the Legislature with specific responsibility for adopting regulations to implement section 84362 as well as broad powers to supervise and regulate the community college system. Section 84362(h) provides that, "The board of governors shall enforce the requirements prescribed by this section, and may adopt necessary rules and regulations to that end." This authority is no doubt sufficient to permit the Board to adopt a regulation providing the entirely rational interpretation of section 84362 described above, but when the Board adopted section 59204 it also relied upon its general regulatory authority now set forth in Education Code section 70901. Subdivision (a) of section 70901 states that:

> "The board of governors of the California Community Colleges shall provide leadership and direction in the continuing development of the California Community Colleges as an integral and effective element in the structure of public higher education in the state. The work of the board of governors shall at all times be directed to maintaining and continuing, to the maximum degree possible, local authority and control in the administration of the California Community Colleges."

Subdivision (c) of section 70901 then goes on to provide that,

> "Subject to, and in furtherance of, subdivision (a), the board of governors shall have *full authority* to adopt rules and regulations necessary and proper to execute the functions specified in this section as well as other functions that the board of governors is expressly authorized by statute to regulate." (Emphasis added.)

Thus, if the Board determined that excluding all ancillary services from CEE was necessary to further the development of the community colleges as a system of higher education or to maximize local autonomy and control, section 70901 gave it authority to adopt such a regulation.

Third, it is well established that courts accord great weight to the administrative interpretation of state statutes. (*Public Resources Protection Association of California* v. *California Department of Forestry and Fire Protection* (1994) 7 Cal.4th 111.) "When a statute has received an administrative interpretation, it comes to the reviewing court weighted with a strong presumption of regularity accorded administrative rules and regulations." (*Young* v. *State Board of Control* (1979) 93 Cal.App.3d 637, 640.) In determining the proper interpretation of a statute and the validity of an administrative regulation, the administrative agency's construction is entitled to

great weight, and if there appears to be a reasonable basis for it, a court will not substitute its judgment for that of the administrative body. (*Action Trailer Sales, Inc.* v. *State Board of Equalization* (1975) 54 Cal.App.3d 125, 133.)

This is because the administrative agency which is responsible for implementing a statute generally has the best understanding of the intended purpose of the law. "'[C]onsistent administrative construction of a statute over many years, particularly when it originated with those charged with putting the statutory machinery into effect, is entitled to great weight . . . .'" (*Robinson* v. *Fair Employment and Housing Commission* (1992) 2 Cal.4th 226, 234, citing *Gay Law Students Assn.* v. *Pacific Tel. & Tel. Co.* (1979) 24 Cal.3d 458, 491; see also *DiGiorgio Fruit Corp.* v. *Dept. of Employment* (1961) 56 Cal.2d 54.)

In this case, the Board is charged with enforcing section 84362 and with interpreting all laws affecting community colleges (Ed. Code, § 70901(b)(14)) and its adoption of section 59204 is, therefore, entitled to the deference routinely accorded to long-standing interpretations adopted by administrative agencies responsible for carrying out a statute. In addition, it is worth noting that this particular interpretation is quite long-standing. The above-quoted passage from section 59204(b) has appeared in the regulation since it was first adopted in 1977.

Fourth, we must point out that section 59204 was reviewed and approved by the Office of Administrative Law (OAL) not once but twice. Pursuant to Education Code section 70901.5 the Board of Governors has not been required to have OAL review and approve its regulations since 1990. However, OAL did have this responsibility throughout the 1980s. Accordingly, OAL reviewed and approved section 59204 in 1983 as part of its comprehensive review of all Board regulations. Then, in 1986, the Board amended section 59204 and it was again reviewed and approved by OAL. We think it particularly significant that OAL reviews regulations against a number of criteria, including whether the agency has legal authority to adopt the regulation. Thus, OAL's review and approval of section 59204 demonstrates that an outside agency specifically charged with reviewing the legal authority for regulations determined on two occasions that section 59204 was properly authorized.

Finally, the Legislature itself has had ample opportunity to express its disapproval of the interpretation adopted by the Board of Governors in section 59204. Since that regulation was first adopted in 1977 the Legislature has amended section 84362 five times and has never indicated the slightest inclination to supersede the Board's action by mandating the inclusion of ancillary services other than food services and transportation. Moreover, the Legislature was certainly aware of the Board's approach to enforcement of section 84362. Since at least 1977 the Board has been required to file an annual report with the Legislature describing its enforcement of the law. Furthermore, since 1990, section 70901.5 has required the Board to provide written notice of proposed regulation changes and to send those notices to a variety of parties, including the educational policy and fiscal committees of the Legislature. Section 59204 has been amended seven times since 1990, so the Legislature has seen the language in question on several occasions and never taken any action suggesting disapproval.

CONCLUSION

For these reasons we conclude that the Board of Governors had ample authority, under Education Code sections 84362 and 70901, to adopt Title 5, section 59204 which excludes all ancillary services from the calculation of the "current expense of education" for purposes of the 50 percent law. This decision represents a reasonable interpretation of section 84362 aimed at harmonizing its provisions with the direction in section 70901 to further the goal of having community colleges function as a system of higher education. This long-standing interpretation was affirmatively approved by the Office of Administrative Law on two occasions, has been tacitly endorsed by the Legislature, and would be entitled to considerable deference were it challenged in court.

Agency's comments provided as text only.

Allan Hancock College
800 South College Drive
Santa Maria, CA 93454

September 28, 2000

Elaine M. Howle, State Auditor*
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Re: Response to Draft State Audit Report

Dear Ms. Howle:

The college has reviewed the draft redacted report of the audit report entitled "California Community Colleges: Poor Oversight by the Chancellor's Office Allows Districts to Incorrectly Report Their Level of Spending on Instructor Salaries." We thank you for the opportunity to respond to the redacted report statements related to Allan Hancock College.

The draft report states that some "districts incorrectly categorized salaries and benefits when calculating instructor salaries." Although the redacted report does not specifically identify Allan Hancock College in this section, the auditors on their visit to the college questioned how the district designated instructor assignments as part of load or overload. Allan Hancock College prorates the (1) salaries of classroom instructors as outlined in Education Code section 84362. It is a local determination as to what assignments are designated as part of load and what assignments are compensated as overload. We maintain that faculty classroom assignments are part of load and, if a faculty member does exceed load, any reassigned time will be considered overload. This determination cannot always be made until an instructor's full semester assignments have been finalized and may involve a manual correction because the college's computerized scheduling program cannot differentiate.

The draft report states "some districts lowered their current educational expenses through inappropriate exclusions for categorical programs and errors in reporting." Specifically the report (2) states that some districts inappropriately excluded district-matching funds for categorical programs. The district disagrees with this interpretation of Education Code section 84362 (c). The district maintains that many expenditures related to categorical programs are not truly discretionary to districts. For example, the college cannot deny student support for which it is eligible through such programs as EOPS and VTEA because it does not want to match the funding. Education Code Section 94362 (c) has been interpreted to include certain support obligations incurred by districts as permissible for exclusion.

* California State Auditor's comments begin on page 41.

The draft report states under the heading "Ancillary Program Costs" that all districts excluded some costs related to ancillary services not enumerated in the law. Education Code Section 70901 (e) (12) clearly gives authority to the Board of Governors to establish, maintain, revise and update the uniform budgeting and accounting structures and procedures for the California Community Colleges. Further, Title 5 of the California Code of Regulations Section 59010-59011 identifies the (3) California Community Colleges Budget and Accounting Manual, chapters 2 through 5, as having been adopted by the Board of Governors. The district asserts that directions provided in the Budget and Accounting Manual are clearly within the legal authority of the Board of Governors and the Chancellor's Office. The college followed these directions and correctly excluded ancillary services.

This section of the report refers specifically to the Allan Hancock College performing arts program. The program is an ancillary service as an auxiliary corporation of the district that supports the theater educational program. For this reason the district correctly excluded from educational (4) expenses transfers to this program. The report indicates that the district stated to the auditors the transfer to the performing arts conservatory was excludable because the conservatory program is a community service. The auditors challenge that interpretation and maintain that the program should be considered an ancillary function. In fact, the conservatory program is both an ancillary program and a community service program. Fifty-three percent of the program income is derived from ticket sales and more than 75,000 patrons attend theatre performances each year-clearly this is a community service. The college was correct in excluding from educational expenses the transfer of funds to this program.

Following the exit conference, the district conducted a careful review of calculations performed and (5) processes leading to preparation of the 50 percent law compliance report. The district agrees that it erred in excluding certain amounts related to equipment. This review also revealed all permissible exclusions from educational expenses, such as those related to student transportation, site and facility improvements, community use of facilities and some instructional salaries, were not excluded.

Under the heading "Monitoring" the report states that the district's auditors did not perform any procedures to detect errors. The district operates under the assumption that the auditors are performing all appropriate procedures and has had no reason to doubt that such was the case. The district will need to rely on the district auditors to respond to this accusation.

The district wishes to state that the Chancellor's Office and the state associations have provided guidance on applying the 50 percent law. We contend that our district employees understand the requirements and correctly applied them. The inappropriate exclusion of some items, such as repairs and leases, was an error not a lack of understanding of the requirements.

In conclusion, the district challenges some of the findings of the State Auditor and agrees with some other findings. The college does not agree with the State Auditor's adjusted compliance rate.

Sincerely,

(Signed by: Ann E. Foxworthy Ph.D.)

Ann E. Foxworthy, Ph.D. Superintendent/President

COMMENTS

California State Auditor's Comments on the Response From Allan Hancock College

To provide clarity and perspective, we are commenting on Allan Hancock College's response to our audit report. The number corresponds to the number we placed in the response.

(1) We disagree with the manner in which the district treats the costs of faculty who have been reassigned, and have also agreed to teach "overload" classes. For the purposes of the 50 percent calculation, the district has treated the faculty salary and benefit costs related to reassignments in a manner not consistent with the terms set forth in the agreements between faculty members and the district. Therefore, it has improperly overstated instructor salaries in its 50 percent law calculation.

(2) As stated on page 14, the Chancellor's Office allows an exclusion for categorical programs to apply only to expenditures of federal and state funds, but not district matching funds. This position is consistent with state law and is reflected on page 2.8 in the Chancellor's Office 1993 Budget and Accounting Manual. Therefore, district funding of categorical programs should be included in current educational expenses when calculating compliance with the 50 percent law calculation.

(3) As stated on page 15, the law allows districts to exclude all expenditures related to only three specific noninstructional activities, namely, student transportation, food services, and community services, from their current educational expenses. The regulations adopted by the Board of Governors, however, expand the law by allowing districts to exclude ancillary services not specified in the law. We do not agree with the expanded interpretation of the law on this matter. On page 28, the Chancellor's Office indicates that it will take this issue to the 50 percent law task force and consider it as part of any legislative proposal to modify the 50 percent law. As recommended on page 21, we encourage the district to actively participate in the task force so that its comments can receive consideration.

(4) If as the district suggests, the performing arts program were indeed a community service, we would not take issue with excluding all of its expenditures from current educational expenses. However, as explained at page 15, this program supports a fully accredited vocational training program for aspiring actors and theater technicians and is thus appropriately identified as an ancillary service. Furthermore, we only adjusted current educational expenses for those program expenditures paid for by unrestricted general funds, which are discretionary. We did not adjust for expenditures paid for by other revenue sources which are restricted to support of this program.

(5) The district suggests that we did not review "all permissible exclusions" from current educational expenses. We began our review of the district's compliance on May 25, 2000, and reviewed information the district provided through September 14, 2000. Thus, the district had ample opportunity to provide us with additional information relating to what they now assert are permissible exclusions from current educational expenses.

Agency's comments provided as text only.

Kern Community College District
Office of the Chancellor
2100 Chester Avenue
Bakersfield, CA 93301

September 28, 2000

Ms. Elaine Howle*
California State Auditor
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear Ms. Howle:

Attached you will find the Kern Community College District Responses to the Audit of the 50% Calculation Performed by the Bureau of State Auditors.

Respectfully,

(Signed by: Walter J. Packard, Ph.D.)

Walter J. Packard, Ph.D.
Chancellor

WJP:kvw

* California State Auditor's comments appear on page 47.

KERN COMMUNITY COLLEGE DISTRICT
RESPONSES TO THE AUDIT OF THE 50% CALCULATION
PERFORMED BY THE BUREAU OF STATE AUDITS

The Bureau of State Audits began their audit of the 1999 50% calculation for Kern Community College District just weeks before there was major turnover in the financial staff who prepared the documents. The District's Assistant Chancellor of Business Services departed for a new position and two weeks later, the Director of Fiscal Services started as Vice President for Business Services in another college district. Most of the questions from the State Auditors came up after the departure of the financial staff who had prepared the 50% calculation.

The documentation should have been thorough enough to answer the Auditors' questions; however, those individuals who are filling the two vacancies as "interim" staff are not as familiar with the laws, the calculation and the adjustments made by the departed staff. A great deal of additional effort would be necessary in order to properly respond in detail to the State Auditors' findings. Comments regarding the findings are listed below:

1. Districts Incorrectly Categorized Salaries and Benefits when Calculating Instructor Salaries

The State Auditors determined that justification was not available for some of the reclassification of administrative salaries to instructional. It should be noted that many of the reclassifications of salaries were deemed correct. The District plans to address the correct coding for proration of those salaries where instructors spend part of their time performing administrative duties.

2. Districts Inappropriately Excluded Some Operating Costs from Their Current Educational Expenses

The State Auditors reduced the exclusion from current cost of education the costs for maintenance agreements and grounds maintenance. This exclusion will not be considered in the current and future calculations. The Auditors also reduced the exclusion from current educational expense for the amounts included in the sites and buildings maintenance. Analysis of these accounts indicates that **some** of these amounts do represent major and permanent improvements to grounds and/or buildings. However, the documentation for these deductions was not available at the time of the audit. The District plans to analyze these accounts to assure that the current calculation will contain only those costs that qualify for exclusion. In addition, the District plans to instruct site administrators in the proper classifications for these costs so that the system will provide the necessary information to prepare the 50% calculation.

3. Some Districts Lowered Their Current Educational Expenses Through Inappropriate Exclusions for Categorical Programs and Errors in Reporting

The District deducted from current educational expenses any costs for categorical programs due to the fact that these amounts are either required for match or are expenses generated by timing differences in collection of state or federal program funds. It does not seem logical to require the matching funds and timing differences for restricted programs to be included in the calculation due to the fact that the District does not have a choice in some of these cases. Additional care will be taken to correct timing differences prior to the calculation. (1)

4. Subtitle Relating to Ancillary Program Costs

The District followed instructions from the Chancellor's Office in excluding costs related to ancillary services not enumerated in the law. The Auditors also noted that the District reclassified some portions of administrators' salaries to these ancillary programs. The District plans to review the accounting for these programs and consider reimbursement policies in order to avoid the necessity to reclassify portions of administrative salaries.

5. Subtitle Relating to Definition of Equipment

The District has different accounts for replacement and new equipment purchases. The Auditors found some instances where the classification by District personnel was not correct. Additional guidance will be provided to assure that classifications are utilized properly.

6. Subtitle Relating to Guidance

The District developed rationale based upon the interpretation of law and guidance from the Chancellor's Office. As indicated above, the District lost key financial personnel who were responsible for documentation of these interpretations.

7. Subtitle Relating to Monitoring

The District's CPA has indicated that they followed the procedures provided by the Chancellor's Office except for specifically testing individual transactions included in new and replacement equipment. They have tested all expenditure classifications as part of the normal audit procedures and have in previous years done specific testing in certain classifications as they deemed "necessary" in the circumstances. (2)

8. RECOMMENDATIONS

The District agrees with the State Auditors' recommendations that a task force should be developed to facilitate the active participation of the districts in adopting regulations and policies to properly implement the 50% law.

COMMENTS

California State Auditor's Comments on the Response From the Kern Community College District

To provide clarity and perspective, we are commenting on the Kern Community College District's response to our audit report. The number corresponds to the number we placed in the response.

(1) The district did not previously discuss timing differences with us. Nevertheless, as stated on page 14, the Chancellor's Office allows an exclusion for categorical programs to apply only to expenditures of federal and state funds, but not district matching funds. This position is consistent with state law and is reflected on page 2.8 in the Chancellor's Office 1993 Budget and Accounting Manual. Therefore, district funding of categorical programs should be included in current educational expenses when calculating compliance with the 50 percent law calculation.

(2) As stated on page 20, CPAs contracting for district audits agree to perform procedures outlined by the Chancellor's Office and to follow supplemental working paper standards required by generally accepted government auditing standards. As a result, the district's CPA's working papers should have included the performance of the specific procedures required by the Chancellor's Office or stated how the CPA's traditional financial statement audit procedures were expanded to explicitly meet the Chancellor's Office's expectation.

Agency's comments provided as text only.

Mt. San Jacinto Community College District
1499 North State Street
San Jacinto, CA 92583

September 28, 2000

Ms. Elaine M. Howle, State Auditor*
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear Ms. Howle:

Enclosed is the written response from the Mt. San Jacinto Community College District to the draft audit report entitled "California Community Colleges: Poor Oversite by The Chancellor's Office Allows Districts to Incorrectly Report Their Level of Spending on Instructor Salaries."

Per your request, the response is also provided in a "txt" format on the required diskette. If you have any questions, please contact Ms. Becky Elam, Interim Vice President, Administration and Finance, at (909) 487-6752, extension 1205.

Sincerely,

(Signed by: Dr. Richard Giese)

Dr. Richard Giese
Superintendent/President

* California State Auditor's comments appear on page 53.

RESPONSE TO THE MT. SAN JACINTO REDACTED REPORT:
"CALIFORNIA COMMUNITY COLLEGES: POOR OVERSIGHT BY THE CHANCELLOR'S OFFICE ALLOWS DISTRICTS TO INCORRECTLY REPORT THEIR LEVEL OF SPENDING ON INSTRUCTOR SALARIES"

September 29, 2000

DISTRICT CALCULATIONS OF COMPLIANCE RATES CONTAINED ERRORS

RESPONSE:

Mt. San Jacinto College prepares financial statements and reports in accordance with the Chancellor's Office Budget and Accounting Manual (BAM), CCFS 311 Instructions, and Education Code Sections (ECS) and California Code of Regulations as required.

The District makes every effort to properly code expenditures for 50% compliance purposes. The reported compliance rate is a reflection of the District's accounting practices and interpretation of allowable exemptions. The basis for the District's interpretation is past practice which has passed local audit testing made by District contracted CPA's, state and regional workshops, and communication with Chancellor's Office staff.

(1) The variance between the District rate and the Bureau's calculation is primarily due to exceptions noted on treatment of community service exemptions. Although the District auditor's have not
(2) taken exception to the District's exemptions for community service, the Bureau has found Mt. San Jacinto out of compliance for the methodology used in calculating the community service exemption as well as insufficient data or documentation to properly base the exemption.

The corrective action in this area will be based on the outcome of this audit.

DISTRICTS INCORRECTLY CATEGORIZED SALARIES AND BENEFITS WHEN CALCULATING INSTRUCTOR SALARIES

RESPONSE:

The findings for Mt. San Jacinto College were related to reassigned time and benefit expenses. Specific instances have been reviewed and appropriate corrective action taken. The District has initiated action to improve accounting for full time faculty with release time for non-teaching activities.

(3) The findings for the District in this area were not material. In addition, expenses for faculty which were offsetting expenditures in the calculation were not taken into consideration, only the exceptions noted from the random sample of 5 which the Bureau tested were used to derive the finding and conclusion in this area.

DISTRICTS INAPPROPRIATELY EXCLUDED SOME OPERATING COSTS FROM THEIR CURRENT EDUCATION EXPENSES

RESPONSE:

Mt. San Jacinto had no findings or exceptions noted in this area.

SOME DISTRICTS LOWERED THEIR CURRENT EXPENSE THROUGH INAPPROPRIATE EXCLUSIONS FOR CATEGORICAL PROGRAMS AND ERRORS IN REPORTING

RESPONSE:

Mt. San Jacinto College does not exclude district-matching funds for categorical programs.

The District was found out of compliance in the treatment of community service. For many years the District has taken a percentage of support services expense and allocated this percentage to community service. This has been an ongoing practice and has passed local audit test. The Bureau did not find adequate support for the exemptions and therefore did not consider any amount for District community service related expense. (1) (2)

The District contends we have two campuses and the community is invited and encouraged to use facilities for events such as intercollegiate competition, theater events, art gallery events, community education programs, library and outreach events such as the Pump-in and the Celebration of the Young Child.

The Bureau excluded all amounts for community service due to the lack of appropriate policy, documented practice, and supporting statistical data. The District agrees improvement is needed in the documented procedures regarding the treatment of community service. However, the District would like to reiterate the fact that expenses are incurred which directly correspond to the community service/community use of facilities such as for facility upkeep, maintenance & repair, security, lighting and heating, and insurance. To exclude all amounts for lack of documentation does not take into account the actual costs associated with community service activities supported by the District. (4)

SUBTITLE RELATING TO ANCILLARY PROGRAM COSTS

RESPONSE:

The District has been made aware of the differences in interpretation between the Chancellor's Office Budget and Accounting Manual (BAM) versus the Education Code Sections pertaining to ancillary program costs. The District has followed the BAM interpretation and supports the Chancellor's Office perspective on this matter. The District has followed written procedure provided by the Chancellor's Office on this matter. Like other exceptions noted within this report, the district auditors did not find exception to the accounting for ancillary program costs for Mt. San Jacinto College. (5)

SUBTITLE RELATING TO DEFINITION OF EQUIPMENT

RESPONSE:

The District has been made aware of the appropriate treatment for replacement vs. new equipment by the Bureau. Although one could argue the replacement equipment is always an upgrade and improvement over old, outdated, unusable and fully depreciated equipment, this is not the literal definition as provided in the code. The findings in this section have been noted and corrective action will be taken to properly treat the equipment replacement purchases in the future.

The sample size of five items tested poses concerns to the District in regard to the validity of conclusions derived from the sample size. Nevertheless, the interpretation by the Bureau has been thoroughly discussed with the auditors and corrective measures will be taken to correct this in the future.

SUBTITLE RELATING TO GUIDANCE

RESPONSE:

When Mt. San Jacinto College faces a question of how to interpret the 50% law, guidance is sought from other districts, Chancellor's Office staff, and most often the local contracted District auditor.

SUBTITLE RELATING TO MONITORING

RESPONSE:

The District contracts for auditing services as required. Specific findings in this area are directed to the CPA's for response.

RECOMMENDATIONS

RESPONSE:

The District will actively participate in Chancellor's Office task forces regarding the 50% law.

COMMENTS

California State Auditor's Comments on the Response From the Mt. San Jacinto Community College District

To provide clarity and perspective, we are commenting on the Mt. San Jacinto Community College District's response to our audit report. The number corresponds to the number we placed in the response.

(1) We disagree with this statement. Of $1.5 million in adjustments to current educational expenses, only $346,000 related to community services.

(2) As shown on page 19, the Chancellor's Office does not require district contracted CPAs to verify community service exclusions. Therefore, unless district's CPAs performed additional procedures, this is not an area that they would normally review. We do know that, according to their work papers, in fiscal year 1998-99, they performed no such review.

(3) The district suggests that we did not consider the information presented to us. However, the district never presented to us any information related to what it is now calling "offsetting expenditures for faculty" during our audit.

(4) The district is incorrect. We did not adjust for all amounts related to community services. In fact, we did not take exception with $416,148 in community service costs that the district excluded from its current educational expenses.

(5) As stated on page 15, the law allows districts to exclude all expenditures related to only three specific noninstructional activities, namely, student transportation, food services, and community services, from their current educational expenses. The regulations adopted by the Board of Governors, however, expand the law by allowing districts to exclude ancillary services not specified in the law. We do not agree with the expanded interpretation of the law on this matter. On page 28, the Chancellor's Office indicates that it will take this issue to the 50 percent law task force and consider it as part of any legislative

proposal to modify the 50 percent law. As recommended on page 21, we encourage the district to actively participate in the task force so that its comments can receive consideration.

Agency's comments provided as text only.

Peralta Community College District
333 East 8th Street
Oakland, CA 94606

October 3, 2000

The Honorable Elaine M. Howle*
California State Auditor
Bureau of State Audits
555 Capitol Mall
Suite 300
Sacramento, CA 95814

Dear Ms. Howle:

Attached is the Peralta Community College District's response to the State audit draft report on the 50% Law. We have also provided our response on diskette in text format as you have requested.

It is our belief that certain audit adjustments you have proposed are in error. If those errors were corrected to reflect the facts, our District would continue to be in compliance with the 50% Law.

We have on repeated occasions through correspondence, conference calls and meetings with your audit staff, attempted to provide the necessary support for our positions. We believe we have more than met that burden of responsibility.

Let me first start out by commenting on the audit process. It is my belief that the process has been flawed from the start. In your letter dated September 27, 2000 you stated: (1)

"Only after we analyze the responses from the districts and the State Chancellor's Office and make any necessary changes will this process be complete. Thus, your assertion that we did not perform due diligence or that our conclusions are supported by erroneous analysis is untrue."

Further, in your letter dated September 25, 2000 that accompanied our redacted copy of our District's ***draft report,*** you stated that your report was entitled "California Community Colleges: Poor Oversight by the Chancellor's Office Allows Districts to Incorrectly Report their Level of Spending on Instructor Salaries."

You stated that the process is continuing; yet the title to your draft report can only be described as inflammatory. A fair and objective draft report would be expected to include a tone neutral title. Unfortunately your draft report does not. There is certainly the appearance that the process was designed to attain the desired audit conclusions.

---

* California State Auditor's comments begin on page 59.

(2) Finally, in your September 27, 2000 letter you stated that the District's Director of Internal Audit, "threatened to contact a legislator" if you did not comply with the District's wishes. You also completely misquoted the District's Assistant Chief Financial Officer. I am disappointed that you would personally attack members of my staff with what is a slanderous disregard for accuracy. That type of conduct should not be a part of your office. Your comments and the heavy-handed tactics of your staff are especially troubling. Giving out same day deadlines and requiring union
(3) employees to sign affidavits certifying under the penalty of perjury just highlights some of the problems in this process. We expected a compliance audit not a criminal investigation.

We still have our disagreements with certain of your audit findings. The issue is, did our District comply with the intent of the 50% Law? The answer to that question is clearly yes. However, your findings disregard our instructor's union contract, the actual duties of certain of our instructional aides, our costs relating to our instructor leave banking program, and the accepted guidance from the State Chancellor's Office relating to ancillary services. Additionally, your staff
(4) has righteously attempted to tell this District how to construct a formula for the allocation of our fringe benefit expenditures. We also believe that, as a matter of law, the salaries of instructors who provide services outside the classroom, such as office hours, or who take a travel or study leave, or are released or reassigned from their regular classroom assignments should be
(5) counted as "salaries of classroom instructors" for purposes of the Education Code Section 84362.

In direct response to your audit findings, there are several errors in the auditor's recalculation. A corrected recalculation would show that our compliance rate would exceed 50%.

1. The State auditor has adjusted our calculation in the amount of $72,057 for two computer lab instructional aides. Their job titles have been broadly defined to account for the rapid changes in technology. The computer lab is open only to students registered in a computer class. These "network coordinators" are stationed at a help desk in the lab to respond to student and instructor questions. They are also consulted with respect to computer hardware and software problems. These individuals have been employed to assist our instructors in the performance of their duties. They are responsible for supervising the laboratory as well as the students that use the lab. They are supervised by one of our instructors. If these individuals were not in the classroom laboratory, an instructor would be required to take on those additional duties. These computer specialists are assisting our instructors by performing important instructional tasks that benefit our computer students. We believe they meet the definition of instructional aides contained in the Education Code as well as Chapter 4, pages 4.49-4.51 of the California Community Colleges Budget and Accounting Manual (1993 Edition). The evidence required by the State auditor to except our position was to demand an affidavit be signed by our union employees, certifying under the penalty of perjury, as to their duties. It would be inappropriate
(3) to ask our union employees to sign this affidavit, especially without representation. Therefore, we refused to comply with State auditor's request.

2. During 1998-1999 the District did not accrue the current year liability for a required payment for sharing growth with our faculty. The formula and the payment of growth revenue were defined in our collective bargaining agreement with our faculty. When the CCFS 311form was filed, the District was unable to calculate the actual accrual. Some argued that the growth target was not met. Our auditors waived an audit adjustment as not material to the overall financial statements. Subsequently, the District and the faculty union agreed on the amount of growth related to the 1998-1999 fiscal year. The amount of the adjustment was $565,437, which by contract, is a current expense of education for the subject year. The State auditor stated, "errors related to failure to accrue liabilities can have a minimal effect on expenditures because the current year's accrual must be offset by the amount that should have been accrued in the prior year." There were no accruals required for growth expenditures in the prior or subsequent fiscal years that would have had a "netting" effect to the accrual, as the State auditors have claimed. Additionally, the District could restate the 1998-1999 financial statements and the expenditure would be included in the current cost of education. (6)

3. The State auditors have included in the current expense of education expenditures for ancillary services in the amount $530,061. The law does not include expenditures for Activity Codes above 6799. There has also been guidance provided by the State Chancellor's office. We have complied with that guidance. Therefore, an audit adjustment is not appropriate at the District level. (7)

4. The audit could have been an opportunity for a fair, reasonable and objective review of the 50% Law. However, this audit has been a process flawed by the complexity of the Law. Numerous terms, including the meaning of current expense of education and classroom instructors is not entirely clear on the face of the statute. We do however, agree with the State auditor that the Districts should actively participate with the Chancellor's Office task force to suggest changes to the regulations and procedures to accomplish the statute's intended purpose. This statute was written for the K12 system, not a community college system. It is our strongly held belief that this statute should be interpreted as appropriate for a college or university system. The California Community College system has evolved in significant ways since the Law was enacted more than 40 years ago. The administration of a college or university is required to provide an array of important responsibilities to its student population which were unknown when the statute was enacted. The challenge for the State Chancellor and the Districts will be to propose the necessary revisions to this Law that will reflect the reality of our modern community college system. (1)

Finally, it is unfortunate that the audit report will lack the credibility so necessary in this situation. You have stated that the process is not complete until the District's have responded. With that said, there is still time to accomplish what is right.

Sincerely,

(Signed by: Ronald J. Temple Ph.D.)

Ronald J. Temple, Ph.D.
Chancellor,
Peralta Community College District

COMMENTS

California State Auditor's Comments on the Response From the Peralta Community College District

To provide clarity and perspective, we are commenting on the Peralta Community College District's response to our audit report. The number corresponds to the number we placed in the response.

(1) The district's suggestion that our process is flawed has no merit. Our process for performing audits and reporting our results is in strict accordance with generally accepted government auditing standards. In fact, in 1999 and on four prior occasions spanning the past 17 years, our process has been scrutinized by a national peer review committee and was found to be in strict accordance with auditing standards.

(2) The district employees did indeed make the threats that we attribute to them. On August 1, 2000, the district's assistant chief financial officer told us that the bottom line was that if we reported that the district was out of compliance, we would have to deal with an unhappy district and faculty association and that the district would contact the Legislature and demand our audit be pulled as inaccurate. During a phone call on September 20, 2000, with the bureau's chief deputy, the district's internal auditor threatened to contact a legislator if we did not comply with the district's wishes. We experienced this environment at none of the other districts we visited.

(3) Generally accepted government auditing standards require us to base our conclusions on sufficient, competent, and relevant evidence. Therefore, it is our responsibility to obtain such evidence from the district. In this case, we attempted to get signed statements because the personnel records the district initially provided to us indicated that the duties of the individuals in question did not include instructional tasks, even though the district counted their salaries as part of salaries of classroom instructors.

(4) The district fails to mention that it did not comply with the Chancellor's Office 1993 Budget and Accounting Manual pages 4.53 through 4.57, which instructs districts to record benefits to accounts that distinguish between instructors and noninstructors. Had it done so, there would have been no need for the district to use an allocation method to split costs between instructors and noninstructors. The benefits allocation method used by the district was flawed. We reviewed numerous iterations of its benefits allocation to ultimately gain assurance that the district was treating instructors and noninstructors consistently.

(5) We are unclear of the point the district is trying to make. At no district did we make an adjustment for the classification of salaries related to office hours, travel, or study leave as instructional. As stated on page 11, the Chancellor's Office has a long-standing policy that addresses the issue of reassignments. Specifically, in 1985, the Chancellor's Office issued a legal opinion stating that 100 percent of an instructor's salary should be included in salaries of classroom instruction unless released from regular duties or paid a stipend to perform administrative duties. Therefore, we did make adjustments when districts included in their salaries of classroom instruction those salaries related to reassignments for noninstructional duties.

(6) The district would have us allow an adjustment for a liability that it did not post in its accounting records. As we point out on page 7, Chancellor's Office instructions direct districts to base their 50 percent calculation on actual disbursements and recorded liabilities. Moreover, the district is responsible for the presentation of its financial statements. If it believed that this accrual was necessary to accurately reflect expenditures and liabilities, it should have recorded the expenditures and liabilities in its financial statements for the district's CPAs to audit.

(7) As stated on page 15, the law allows districts to exclude all expenditures related to only three specific noninstructional activities, namely, student transportation, food services, and community services, from their current educational expenses. The regulations adopted by the Board of Governors, however, expand the law by allowing districts to exclude ancillary services not specified in the law. We do not agree with the expanded interpretation of the law on this matter. On page 28, the Chancellor's Office indicates that it will take this issue to the

50 percent law task force and consider it as part of any legislative proposal to modify the 50 percent law. As recommended on page 21, we encourage the district to actively participate in the task force so that its comments can receive consideration.

Agency's comments provided as text only.

Santa Monica Community College District
1900 Pico Blvd.
Santa Monica, California 90405

September 29, 2000

Elaine M. Howle, State Auditor*
California State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, California 95814

Re: Santa Monica College's Response
To the Findings of the State Auditor

Dear Ms. Howle:

Enclosed is Santa Monica College's response to the State Auditors' review of the 50% law. The resolution of the Santa Monica College Senate poignantly expresses a statewide community college system caught between two conflicting laws and multiple interpretations.

For the colleges, if nothing else this audit brings the inconsistencies in both laws to a head. A statewide resolution must be agreed upon before more device and accusatory actions tear up the collegiality of our higher education institutions.

Santa Monica College has been actively participating in the Chancellor's 50% Task Force. Both Randal Lawson, Vice President for Academic Affairs and Dr. Robert Adams, Vice President for Student Services, were selected by their respective state associations to represent the colleges on the Task Force. It is our understanding that the work of the Task Force will be completed in October 2000 and that recommendations will be taken forward by Chancellor Nussbaum.

Sincerely,

(Signed by: Piedad F. Robertson)

Piedad F. Robertson
President/Superintendent

* California State Auditor's comments begin on page 71.

Santa Monica College's response to the findings of the State Auditor

In 1961 AB1786 added a new Education Code Section 17503. AB1786 was designed " to halt the trend toward large classes and expensive counseling services by insisting that a substantial portion of a school district's current expenses be devoted to the payment of salaries for classroom teachers," according to the Bill Memorandum send to the governor on July 19, 1961 by Alexander H. Pope.

The method for accomplishing this intent was to require elementary school districts, high school districts, junior college districts, and unified school districts to expend during the fiscal year set percentages of their current expense of education for payment of salaries of classroom teachers. The percentage for junior colleges was 50%. Since 1961 this law has remained basically unchanged and is currently referred to as the 50% Law (Ed. Code Section 84362).

Since 1961 there have been substantial changes to the operation of junior colleges. Even the education code was reorganized to reflect how a junior college district (now called a community college district) is not like a school district. In 1977 the Legislature enacted a collective bargaining law requiring negotiations with the faculty union for all matters effecting wages, hours of employment, class size, and other terms and conditions of employment. Then in 1988 AB1725 was chaptered into law. Its general purpose was to improve academic quality, and to that end the Legislature specifically intended to authorize more responsibility for faculty members in duties that are incidental to their primary professional duties, and in fulfilling their expanded responsibilities they were not performing administrative functions.

Despite the substantial changes effecting the operation of community colleges there have been no substantive amendments to the 50% Law. We do not believe this is because it is working as

originally planned but rather because the interpretation of the clauses in the law have changed over time. It is the lack of consistence and clear regulations explaining the interpretations currently expected in the application of the 50% Law that has resulted in districts applying their own reasonable interpretation of what the current intent of the law is. An example of this is the definition of an instructor in Education Code Section 84362(b)(1) which states in part "... whose duties require him or her to teach students for at least one full instructional period each school day for which the employee is employed." Instructors rarely teach classes each school day of the semester. Most instructors have a teaching load of five courses which meet three ours each per week. This can easily be handled in three or four days of classes out of the five school days in the week. Because of other Education Code provisions all five days are classified as days of employment. A literal application of the 50% Law would require a proration of the instructor's time for the days he or she did not have a teaching assignment even though the instructor was teaching full time. However, there are no examples in administrative regulations, the Budget and Accounting Manual, or the 50% Law compliance form that explain how to interpret this obvious problem. Therefore the district uses common sense and comes up with a method. This interpretation is audited by the independent auditors and submitted to the Chancellor's Office. Never had the Chancellor's Office informed the District that our interpretations of the 50% law were not in compliance until the Ralph Black opinion was issued in June, 2000, almost a year after the close of the fiscal year in question. (1)

In the audit conducted by the California State Auditor ,the Education Code was used to obtain definitions for calculating compliance with the 50% Law. The audit staff realized that a literal interpretation of the code would produce absurd results so they to had to use definitions that were not what the words said but were what they took them to mean during the fiscal year being audited. Clarifications that were put into administrative regulation after the end of the period being audited were not given any standing. An example of this are the changes in the 2000

Budget and Accounting Manual (BAM 2000) which clarified issues raise by incomplete examples in the 1993 Budget and Accounting Manual (BAM 93).

The State Auditor was in error by concluding that the District incorrectly categorized salaries and benefits when calculating the instructor salaries. The Auditor makes reference to the Chancellor's
(1) Office directions to exclude the reassigned portion of the instructor's pay from instructor salaries. The only directive closely addressing this is on page 4.45 and 4.46 of BAM 93. Even there it includes the ambiguous statement that included within the duties of instructors are intermittent duties as assigned... whose purpose is the evaluation or improvement of the educational program in the district. We disagree with the Auditor and the Chancellor's Office regarding reclassification of the reassigned time from instructional to noninstructional for instructors involved in curriculum and course development, and Faculty Senate leadership and committees. These functions are the type of activities the State is encouraging community colleges to involve faculty in under AB1725. The reassigned duties are intermittent and clearly improve the educational program of the college. The faculty have explained to the district the importance of having instructors given reassigned time to perform these activities. Just recently the SMC Academic Senate passed a resolution requesting the College continues past practice of reassigned time for department chairs, Academic Senate leaders, and curriculum development. They claim the practice has had a beneficial impact on the academic success of students. (See Attachment A)

Another area of disagreement is the interpretation of the code provision covering instructor benefits. Education Code Section 84362(a)(3) states , "However, the cost of all health and welfare benefits provided to the instructors by the community college district shall be included within the meaning of salaries of classroom instructors." We view "all" to mean all of the benefits the

district provides to a faculty member employed to be an instructor. As opposed to a proration of the instructors benefits. (2)

The Auditor has added a net amount of $216,427 in expenses into its calculation of current expense of education. We believe there should have been a net reduction in the current expense of education as a result of audit adjustments. The auditor has taken the position that salaries and benefits of district personnel related to expenditures for capital outlay required in developing the campus facility are included in the current expense of education. This is contrary to the directives in BAM 2000 which were added as clarifications to the BAM 93. In this same net amendment, reductions for community service expenses are not reflected because the District could not produce hard documentation that would satisfy the auditor. The standard of documentation is at or above that needed for evidence in a criminal investigation. (3) (4)

In the District's millions of dollars of operating expenses errors amounting to $8,886 incorrectly reduced the current expense of education. However, the Auditor found that the district did not classify equipment replacement as new equipment. The only error by the District was classifying new equipment as replacement. We acknowledge that mistakes do happen and there are expenses that get miscoded in error. Some mistakes increase the percentage and others reduce the percentage.

The inclusion of ancillary services into the current expense of education is an issue that must be resolved by the Chancellor's Office since there are clear directives in BAM, and state reporting forms that define the current expense of education as excluding ancillary expenses. This is an area that we have completely relied upon the directives provided by the Chancellor's Office.

Santa Monica College values its faculty and the contributions they have made towards the State's expectations of student achievements. The narrow interpretation of the 50% Law that has guided the State Auditor, brings to the forefront the question of what legislators, Board of Governors, and Chancellor Nussbaum really believe is the role of community college faculty. There is a contradiction between the K-12 formula that was imposed on community college, and the collegial role higher education expects of college instructors reflected in Title V's responsibilities beyond the classroom assigned to the faculty.

ATTACHMENT A

Resolution of the

Academic Senate of Santa Monica College

September 19, 2000

Background: recently, Ralph Black, counsel to the Chancellor's Office, issued a ruling that reassigned time generally must be counted as "administering" and not "teaching." In response, SMC's administration has claimed that some restructuring of duties might be needed to meet the state requirement that 50% of the college's expenditures be on teaching. In light of these actions, the Academic Senate strongly supports the following resolution.

Whereas SMC's mission is "Changing lives through excellence in education for a global community";

Whereas the first goal in SMC's Master Plan is "Student Success";

Whereas the second goal in SMC's Master Plan is "Academic Excellence"; and

Whereas an outstanding faculty is vital to
- maintain and nourish "excellence in education,"
- promote student success so that students can develop to their full potential, and
- advocate practices that will sustain academic excellence,

be it therefore

RESOLVED

1. **Faculty must participate meaningfully in all significant college decision-making.**

   The faculty's responsibility is to emphasize academic values in all questions concerning the college. Title V, Section 53200 of the California Code of Regulations assigns to faculty the responsibility of participation in academic and professional matters, specifically:

- curriculum,
- degree and certificate requirements,
- grading policies,
- educational program development,
- standards or policies regarding student preparation and success,
- college governance structures, as related to faculty roles,

- faculty roles and involvement in accreditation processes,
- policies for faculty professional development activities,
- processes for program review, and
- processes for institutional planning and budget development.

The Academic Senate is the main vehicle for faculty representation in these processes, and **its leaders must have reassigned time in order to fulfill this responsibility without compromising their instructional roles.**

2. **Faculty must continue to lead departments; SMC must retain the department chair structure.**

Department chairs serve the college in a number of important roles that are discipline-specific. The hiring and evaluation of faculty, the evaluation and development of curriculum, the scheduling of classes, and the supervision of classified staff and facilities all require an intimate familiarity with the characteristics of that discipline. A division dean model would give fewer people responsibility for a greater number of disciplines, some unrelated to that person's training. Further, a department chair's tenure guards against the appearance of inappropriate influence applied to the evaluation of academic performance. The department chair system is woven into the culture of this college, is widely accepted and respected, and has a record of excellent service to the central mission of the college — providing high-quality education for our students. **We reaffirm the need for department chairs to receive appropriate reassigned time to fulfill their responsibilities.**

3. **Faculty must continue to create new programs and new ways for students to learn.**

As an institution of higher education, Santa Monica College must have instructors who contribute in numerous ways to the operation and the spirit of academic inquiry that are crucial to an outstanding educational program. Members of the faculty are the primary innovators in curriculum and program development. When supported by grants, reassigned time for such projects is not a cost to the District (and therefore not part of the 50% law calculation). To continue to provide "excellence in education," however, the college must provide more support than just the grant projects: **the college must encourage innovation by maintaining at least the current level of reassigned time.**

COMMENTS

California State Auditor's Comments on the Response From the Santa Monica Community College District

To provide clarity and perspective, we are commenting on the Santa Monica Community College District's response to our audit report. The number corresponds to the number we placed in the response.

(1) As stated on page 11, the Chancellor's Office has a long-standing policy that addresses this issue. Specifically, in 1985, the Chancellor's Office issued a legal opinion stating that 100 percent of an instructor's salary should be included in salaries of classroom instruction unless released from regular duties or paid a stipend to perform administrative duties. Thus, it was not left up to the districts to devise their own interpretation of this issue.

(2) The district suggests that faculty benefits should not be prorated even though related salaries have been prorated. We disagree. It is illogical to prorate salaries and not prorate related benefits. The term "all" indicates that all types of benefits should be considered, not that all payments for benefits should be classified as instructional even if an employee is reassigned to noninstructional duties. Also, with regard to fringe benefits that fall within salaries of classroom instructors, the Chancellor's Office's 1993 Budget and Accounting Manual states that "applicable costs are for instructors and direct instruction-related instructional aides whose salaries are reported under Objects 1100, 1300, 2200 (Direct Instruction) and 2400 (Direct Instruction)." Noninstructional salaries are not recorded under these accounting codes; thus benefits associated with noninstructional salaries should not be included in salaries of classroom instructors.

(3) The district is incorrect. Our position is consistent with the Chancellor's Office's 1993 Budget and Accounting Manual page 4.35, which does not include administrative salaries as a capital outlay expenditure. As stated on page 9, our audit covers district reporting for fiscal year 1998-99. While the district is correct that changes have been made to the Budget and Accounting Manual,

these changes did not take effect until fiscal year 2000-01. In conducting our audit, we used the laws, regulations, and Chancellor's Office guidance in effect during the period of our review.

(4) Generally accepted government auditing standards require us to base our conclusions on sufficient, competent, and relevant evidence. Therefore, it is our responsibility to obtain such evidence from the district. In this case, we requested payroll records showing how the employee's pay was originally classified and a job description or evaluation indicating the employee's duties. This was a reasonable request that would have provided sufficient evidence. The district never provided the data.

Agency's comments provided as text only.

September 29, 2000

West Hills Community College District
Frank Gornick Superintendent/President
300 Cherry Lane
Coalinga, CA 93210

Elaine M. Howle, State Auditor*
California State Auditor, Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, California 95814

Re: West Hills Community College District Fiscal Year 1998-99 Audit

Dear Ms. Howle:

We have received your draft final report resulting from Jim Sandberg-Larson's June 2000 on-site audit on behalf of the Bureau of State Audits (Bureau). The audit covers fiscal year 1998-99 and its purpose was to determine whether the West Hills Community College District (District) was in compliance with the 50% law under section 84362 of the Education Code.[1] That section states in relevant part:

> There shall be expended during each fiscal year for payment of salaries of classroom instructors by a community college district, 50 percent of the district's current expense of education.

The audit concludes that the District was non-compliant with the 50% threshold for fiscal year 1998-99. (1)
In order to arrive at this conclusion, the audit excluded (1) all categorical matching funds and all level of maintenance expenses and transfers related to administering these funds and (2) all ancillary costs and transfers associated with the college farm, the child development center, dormitories, and the District's bookstore. The net effect of these exclusions from the current expense of education was an audit finding (2)
that could be interpreted to mean that 15.37%[2] more money should have been spent for teacher salaries instead of District support for categorical funding and ancillary services.

The direct implication of the Bureau's position is that the salaries of classroom instructors must increase as the amounts expended in support of categorical and direct aid programs increase even though such programs are designed to benefit students and even though those programs do not incur instructor salary expenditures.

We respectfully disagree with the Bureau's determinations as they would undermine the very purpose of community college districts in the State of California. As noted in greater detail below, community college districts are the "gateway" to post-secondary educational opportunities for students, including students who are unable to financially or academically qualify for the State University or the University of California systems. In order to increase student participation in higher education, the District expended monies to match categorical programs designed to enhance access by targeted populations by supporting their

[1] All section references are to the Education Code unless otherwise noted.

[2] This percentage is the difference between the District's SCI/CEE figure of 53.17% and the Bureau's draft final audit figure of 37.80%.

* California State Auditor's comments begin on page 81.

enrollment, retention, graduation, and transfer rates. These costs give meaningful expression to the District's commitment to these vital programs and they also serve to defray ancillary costs authorized by the Budget and Accounting Manual of the California Community Colleges (the BAM). As you know, Section 84030 requires the BAM to be interpreted and implemented so as not to adversely affect, either expressly or by implication, the content of any educational program or objective. These categorical funding programs include District matching funds for Disabled Student Programs and Services (DSPS), the Extended Opportunity Programs and Services (EOPS) funding for lower income and first time minority admittees to higher education, and categorical funds targeted to maximize math, engineering and science skills (MESA) for the District's students. West Hills enrollment has dramatically increased over the years from 2,403 in 1990 to 4,060 in 2000. The audit's conclusion would actually discourage the District's expenditures on these worthwhile student programs and ancillary services which, if not expended, would serve to disenroll current students and to discourage future students from enrolling in community colleges such as West Hills.

(1)

Section 84362 was an early attempt by the legislature to reduce classroom size. While this is surely a worthy goal, the Legislature never intended it to be pursued at the expense of reducing funding for students attending community colleges. Of course, class size has never been an issue at the District since average class size is among the lowest in the community college system. At the same time, the District has also maintained a high percentage of full time instructors in the classroom. Indeed, the District is among a group of only six community college districts who have met their full time/part time faculty obligations as provided by Title 5. (See, e.g., Cal. Code Regs., tit. 5, §§ 51025 and 53300 et seq.)

The effect of the audit findings, by not recognizing the District's commitment to categorical programs and to ancillary services as current expenses of education (generally referred to as CEE), is to give the misleading impression that these dollars were still available in the fiscal year 1998-99 to pay salaries of classroom instructors after they were already committed and expended to maximize student enrollment and student opportunities for success at West Hills.

As described below, it was certainly not the intent of the Legislature to increase faculty salaries at the expense of students. The District's primary mission, like other community colleges, is to educate students. Financial resources are primarily committed to students and secondarily to faculty and administrative salaries. The audit's interpretation of the Education Code and the BAM reverses this priority and adversely affects the primary objectives of the District's educational program. Surely, the Legislature would never have intended such a result, particularly in view of the role played by community colleges in California.

(1)
(2)

Recently, the Regents of the University of California have been encouraged to adopt a program to maximize the opportunity of community college students to attend the University of California, the jewel in the crown of California public education, which currently limits its enrollment to the top 12 ½ % students in the state. This proposed extension of the opportunity for students at the community college level to transition to the University of California can only be achieved by giving these students the tools they need to succeed. Categorical funding and ancillary support services number among the necessary efforts designed to equip students with these essential tools.

The narrow interpretation adopted by the Bureau in its audit would ascribe to the Legislature a priority that teachers should come first and students should come second. The District is rightly proud of its enrollment record and proud of the fact that it has maximized the opportunity for students to attend college by committing funds to categorical programs and ancillary services to enhance the success rate of these entry level students. Fiscal year 1998-99 cannot and should not be reopened now to reallocate the District's expenses on categorical funding and ancillary services to increase faculty salaries.

(1)
(2)

Literal meanings that lead to absurd results (see legal citation below) are not the concern of the Bureau since it does not concern itself with these policy issues. However, the District is concerned these public policy issues will fall victim to myopic and literal interpretations of the 50% law that are neither supported nor countenanced by Title 5 or the Chancellor's Office through the BAM. The District is disappointed in

(1)

the Bureau's interpretation and hopes it reconsiders its view of the 50% law. The District will continue to support student programs through categorical funding and ancillary services and will continue to fund, consistent with budget constraints, competitive instructor salaries.

The following is a specific response and analysis of the funds disallowed by your recent audit as a current expense of education.

1. Unrestricted General Fund Costs Allocated to Categorical Programs

The Bureau's stated rationale for disallowing the District's exclusion from its CEE calculation of approximately $708,394[3] is that "only expenditures of state and federal funds received for categorical programs is [sic] excludable." The Bureau cites to Section 84362 and BAM 2.8 to support this proposition. The Bureau does not cite to Title 5, *California Code of Regulations*, section 59204, a regulation adopted by the Board of Governors (Board) that speaks directly to the issue of categorical aid programs as well as to other monies received by the District that have externally imposed restrictions that govern the expenditure of such funds. The Bureau takes the position that only the amounts of the federal and state funds themselves may be properly excluded from the District's CEE calculation. That is, with respect to categorical program funds, the District is expected to assume the role of a mere conduit or pass through entity. Necessary expenditures (e.g., overhead expenses, matching funds, maintenance of effort) directly attributable to the receipt and disbursement of such funds are not themselves considered "federal or state funds" for purposes of Section 84362(c). As such, so the Bureau's argument runs, the District's costs incurred in support of its categorical programs must come from its General Unrestricted Subfund and, therefore, are not excludable from the District's CEE calculation. (1)

The Bureau's interpretation here is unreasonable when analyzed against the statutory, regulatory, and administrative accounting provisions governing the District's CEE calculation. Title 5, *Code of Regulations*, section 59204 establishes how CEE calculations are properly made. That definitional section states that a district's CEE calculation "shall include Object of Expenditures 1000 through 5000 for activity codes 0100 through 6700 . . . less expenditures of [categorical aid] . . . and . . . other monies received which are restricted by an external party, law, or other legal requirement." (Cal. Code Regs., tit. 5, § 59204(b)(emphasis added).) The "Object of Expenditure" and "Activity Codes" referenced in this regulation are set forth in the BAM. The Legislature, in Section 84030, required the Board to approve the BAM and expressly stated that the BAM would authoritatively govern the accounting system of any community college district. In adopting the BAM, the Board determined that the BAM shall have the same effect as any other regulation adopted by the Board. (Cal. Code Regs., tit. 5, § 59011.) Interpretations of the BAM that adversely affect the content of the educational programs and objectives of the community colleges are expressly prohibited by Section 84030.

This is not to say that the BAM and other sources bearing on calculations of the 50% law are devoid of ambiguity.[4] For example, the BAM 4.45—4.47 (1993) leaves the impression that activities by academic employees in noninstructional assignments are definitionally excluded from the District's SCI calculation. On the other hand, the Chancellor's Office has promulgated regulations that presumably allow academic

[3] The Bureau has been less than clear with respect to this figure. The District was initially informed in the Bureau's preliminary report that this figure was $1,119,956. On September 22 the Bureau informed the District that this figure was being reduced by $491,562 (which would leave a figure of $708,394). In the Appendix to its "draft" final report, however, the Bureau set this figure at $864,264 but in the body of that same report the Bureau sets this same "non-ancillary" figure at 1.2 million. (3)

[4] The BAM 2.8 (1993) itself states that "Circumstances and evidence relative to restrictions may not always be clear. The district should seek Chancellor's Office, legal, and/or contracted auditor consultation as needed." This cautionary note is also sounded in BAM 2.9 (2000). (1)

employees to engage in the same or similar noninstructional activities (described as "in lieu of classroom instruction" activities) and yet have their entire salaries included in the districts' SCI calculations without proration. (See Cal. Code Regs., tit. 5, § 55720 et seq.) In the face of such ambiguities, the District (4) believes the surest way to proceed is to account for its CEE and SCI calculations in such manner that the Legislature's intent in establishing and maintaining the community college system is given full expression. An analysis of the relevant legislative history [5] and the straightforward application of Section 84030's mandate leads the District to conclude that its exclusion of direct costs incurred in support of categorical and direct aid programs from its CEE calculation is all but compelled.[6]

Notwithstanding the ambiguous elements in these sources of law, one can discern two important considerations by the Board in promulgating the definition found in Title 5, *California Code of Regulations*, section 59204(b). First, the Board undoubtedly believes that the Legislature intended CEE exclusions to extend beyond the bare amounts of categorical aid; it specifically included "other monies" in the excludable category so long as such monies were in some fashion "restricted" and not subject to the unfettered discretion of districts' governing boards. Secondly, the Board's definition narrows the includable items in the CEE calculation to those falling within clearly identified objects and activities described in the BAM. (Cal. Code Regs., tit. 5, § 59204.)

As the Bureau is well aware, the BAM lists many categorical programs for which incurred costs are properly recorded within the General Restricted Subfund. The District's participation in these categorical programs involves transfers of monies to the Restricted Subfund for purposes that include program qualifying through the allocation of matching funds, expenditures associated with maintenance of effort requirements, or costs of a generalized nature incurred in supporting the categorical programs. These transfers have been questioned by the Bureau even though under the BAM these costs represent resources with uses "restricted by law, regulations, donors, or other outside agencies and are to be accounted for in Subfund 12–Restricted." (See BAM 2.7–2.8.) The District's expenditures in support of categorical aid and direct student aid programs truly constitute non-discretionary, restricted revenue under the BAM because the revenues transferred from the General Fund to the Restricted Subfund are so restricted. Loss of direct student aid or reductions in future allocations would result if the District failed to perform (i.e., transfer the required amounts to the restricted subfund and actually spend such funds pursuant to the terms of the aid program in question) under these implied-in-fact or quasi-contractual relationships established by the various categorical aid and direct aid programs.

With respect to the so-called discretion districts exercise over the monies transferred to restricted (5) subfunds, the District notes that community college districts give account of their financial positions through a retrospective process. The Annual Financial and Budget Report[7] is designed to capture the budget history of districts for the immediately preceding fiscal year. The information in this report comes from "closed books" since districts cannot in any way alter the financial information contained in its accounting sources. Districts simply transfer the information to the annual budget report and this information itself determines a particular district's SCI/CEE ratio and the need, if any, for an exemption from the 50% mandate. Therefore, any "discretion" that districts retain during the fiscal year as regards the allocation of revenues among its various subfunds is irretrievably lost once the fiscal year ends and the books are closed. It is only when this discretion ceases to exist that districts turn their attention (some months later) to the process of describing their previous fiscal year's performance. By the time the annual report is filed, district discretion over the allocation of revenues is long gone.

[5] See, e.g., AB 1725 (Stats. 1988, c. 973).

[6] Moreover, even if not compelled to so account for its expenses in support of such programs, the District may, pursuant to Section 70902, take any action not inconsistent with, preempted by, or in conflict with the purposes for which it has been established.

[7] Filed annually on Form CCFS-311 (Rev. 2/98).

The very purpose of dividing the General Fund into two subfunds is to differentiate truly discretionary revenue from restricted revenue. The Bureau asserts that the costs incurred in support of categorical programs represent truly discretionary revenue. However, the Bureau's reasoning leads to the untenable conclusion that the District may accept such funds but that if it spends "discretionary revenue" in support of categorical programs, it must proportionately increase the salaries of its instructors. In its draft final report the Bureau states that "Presumably, the district retains the authority to discontinue dedicating unrestricted funds to the [federal and state programs], at which point it would become ineligible to receive state and federal funds." (West Hills Redacted Report, p. 2.) Of course, the District feels duty-bound as part of its educational mission to offer its students full access to the widest range of categorical and direct student aid programs and yet all of these programs necessarily entail non-discretionary costs the District must incur in order to receive program funds. In this light, the "discretion" of which the Bureau speaks in the above-quoted statement is illusory and is tantamount to saying that the District has the discretion to cease operating as a meaningful institute of higher education.

The primary mission of the community college system is to enable as many students as possible to achieve the dream of attending an institute of higher education and to support and encourage the intellectual growth of such students. California's community colleges thus represent the gateway to higher education for those who otherwise do not qualify for admission into the University of California or California State University systems. In large measure the community colleges serve as a kind of safety net for this class of students. Federal and state categorical and direct student aid is made available as a means of helping community college districts catch such students in their nets, so that as few as possible are lost. But these aid programs are not self-executing; they in turn need the support and encouragement of community college districts. The beneficiaries (i.e., students) of the categorical and direct aid depend on districts to expend time, money, and talent in support of these programs. And yet, in the face of this system of mutual cooperation directed toward the end of benefiting students, the Bureau adopts an exceedingly narrow interpretation of the law. It is an interpretation that ignores the very purpose of the community college system and is oblivious to the manner in which community college districts deliver their educational services to students. (1)

At this point, the District is compelled to point out that the Bureau does not (and indeed cannot accurately) assert that the District's expenses incurred in support of the categorical programs are excessive or disproportionate to the aid received. Rather, the Bureau skirts this issue and simply adopts a narrow interpretation of categorical aid such that districts choosing to take part in the various categorical programs will necessarily increase their CEEs which, in turn, would necessitate an increase in instructor salaries. However, this interpretation leads to a SCI-CEE ratio that is very low and leaves the misleading impression that the District has additional funds available that it could allocate to teacher salaries. In fact, such funds have already been transferred to the restricted subfund and by the time the annual budget report is completed the funds have been spent in support of categorical and direct aid programs that benefit students. The District believes that a reviewing court, applying principles of statutory construction, would attempt to avoid the absurd results that would come about in an educational system governed by the Bureau's interpretation that the phrase "amounts expended from categorical aid" means only the federal or state funds themselves.[8] (1)

For reasons grounded in principles of statutory interpretation, and because the District's exclusion of costs incurred in support of categorical programs is consistent with a reasonable interpretation of the regulations adopted by the Board and is also consistent with the BAM, the District must disagree with the Bureau's analysis and maintain that its exclusion of such expenditures from its CEE calculation is proper. (1)

2. Unrestricted General Fund Costs Allocated to Ancillary Programs

With respect to the exclusion of costs related to ancillary services, the Bureau acknowledges that the District's practice is in accord with instructions from the Chancellor's Office but nonetheless disallows the

[8] It is well-settled that courts will eschew any literal construction of a statute that would lead to absurd results (See, e.g., Younger v. Superior Court (1978) 21 Cal.3d 102,113.)

District's exclusions totaling approximately $2,612,272. Given the level of costs captured by this exclusion, the District's compliance with the 50% rule turns on the interpretation of this exclusion category.

The Bureau's position is simple. It disagrees with the Chancellor's position, established in Title 5, that only Object of Expenditures 1000 through 5000 and Activity Codes 0100 through 6700 must be included in the (2) District's CEE calculation. All of the District's disallowed exclusions fall in Object of Expenditures 6900. The 6900 activities, as the Bureau is aware, is entitled "Ancillary Services" and covers a host of administrative and support services that are not included in the CEE calculation. As such, the District properly excluded them from its CEE calculation.
Resolution of this disagreement may ultimately come from statutory changes enacted by the Legislature or from the Board itself should it decide to promulgate and adopt different or clarifying regulations. And it is conceivable that a reviewing court could determine that the Board's regulations and the BAM are not within the scope of the authority conferred upon it pursuant to Sections 84030 and 84362(h). (See Gov. Code, § 11342.1.) However, any party seeking such a judicial determination must remember that the Board's interpretation of Section 84362 is entitled to great weight and deference by reviewing courts and that the BAM is itself expressly provided for in Section 84030. (See, e.g., Yamaha Corp. of America v. State Bd. of Equalization (1998) 19 Cal.4th 1, 12.) Moreover, as noted above, interpretations of the BAM (the Bureau's included) may not, either expressly or by implication, adversely affect the content of the community colleges' educational programs or objectives.

The Bureau's interpretation does precisely what Section 84030 says it cannot do. Its narrow interpretation of the BAM and its failure to appreciate the Board's authority exercised therein regarding ancillary services directly undermines the content of the District's educational programs and objectives. As provided in the BAM 2.8, the District has sought the advice of legal counsel and its contract auditor and they concur with the District's interpretation of the BAM and the District's calculation of its CEE as described in this response letter. Therefore, the Bureau's audit notwithstanding, the District continues to believe that is appropriate to exclude costs incurred for ancillary services in accord with Section 84362, the Board's regulations, and the BAM.

3. Incorrect Coding of Faculty with Non-Instructional Assignments

The Bureau's position is that faculty members Britton and Purvis engage in non-instructional activities and that the salaries attributed to these activities do not qualify as "salaries of classroom instructors" under Section 84362(a)(2). The Bureau concludes that those portions of instructors Britton and Purvis' salaries that are non-instructional total $37,372. This amount is therefore deducted from the salaries of classroom instructors calculation.

With respect to instructor Purvis, 20% of his Fall 1998 and 40% of his Spring 1999 non-instructional/release (6) time duties were performed within his 177 day schedule and within the normal 15-18 hour per week instructor time schedule. Therefore, according to the BAM, the time spent on curriculum development and coordination of the administration of justice program falls with the authorized incidental duties of instructors pursuant to BAM 4.45—4.46. As such, all of instructor Purvis' salary should be included in the District's SCI calculation.

With respect to instructor Britton, the release time and extended contract days are manifestations of a bargained-for contractual relationship whereby instructor Britton engages in noninstructional activities above and beyond the 175-day minimum academic calendar. These activities are engaged in during the summer break and are properly characterized as administrative and support activities related to farm operations. As (7) such, they fall under section 6930 of the BAM. As previously noted, Objects of Expenditures above 6800 are excluded from the CEE calculation altogether. That is, although the Bureau properly characterizes certain of instructor Britton's activities as "noninstructional", it fails to make the next analytical step which reveals that the activities fall under BAM provisions that prevent their inclusion in the District's CEE. To the extent an adjustment is to be made, therefore, that portion of instructor Britton's salary attributed to non-instructional time spent in service to the farm operations removed from the District's SCI calculation should nevertheless be excluded from the District's CEE calculation.

4. Computer Software

The Bureau's position is that software is not excludable and that it should have been listed as a Object of Expenditure 4000 item. The Bureau appears to have overlooked the fact that Object of Expenditure 4000 captures "items having a useful life of less than one year." Since the computer software in question clearly has a useful life exceeding one year (and since, even under the newly revised BAM taking effect July 2000, the software in question involves a purchase price in excess of $200), it was properly included in Object of Expenditure 6400 which applies to amounts expended for the purchase of new equipment. The software expenditures do not fall within Object of Expenditure 4000 and were properly excluded by the District. (8)

5. Maintenance Agreement for Copiers Miscoded to Equipment Rentals

The Bureau takes the position that maintenance agreements are not excludable. The District's position is that the Bureau ignores the applicable regulations which clearly state that funds for lease agreements for plant and equipment shall be deducted from the District's CEE calculation. With respect to the subject copiers, a review of the lease agreement reveals that any and all maintenance activities are subsumed within the agreement itself. No separate maintenance agreement exists. Consequently, the $5,061 was properly excluded from the District's CEE calculation. (9)

We trust the foregoing responds to the points made in your audit.

Sincerely,

(Signed by: Frank Gornick)

Frank Gornick
Superintendent/President

COMMENTS

California State Auditor's Comments on the Response From the West Hills Community College District

To provide clarity and perspective, we are commenting on the West Hills Community College District's response to our audit report. The number corresponds to the number we placed in the response.

(1) As stated on page 14, the Chancellor's Office allows an exclusion for categorical programs to apply only to expenditures of federal and state funds, but not district matching funds. This position is consistent with state law and is reflected on page 2.8 in the Chancellor's Office 1993 Budget and Accounting Manual. Therefore, district funding of categorical programs should be included in current educational expenses (CEEs) when calculating compliance with the 50 percent law calculation.

(2) As stated on page 15, the law allows districts to exclude all expenditures related to only three specific noninstructional activities, namely, student transportation, food services, and community services, from their current educational expenses. The regulations adopted by the Board of Governors, however, expand the law by allowing districts to exclude ancillary services not specified in the law. We do not agree with the expanded interpretation of the law on this matter. On page 28, the Chancellor's Office indicates that it will take this issue to the 50 percent law task force and consider it as part of any legislative proposal to modify the 50 percent law. As recommended on page 21, we encourage the district to actively participate in the task force so that its comments can receive consideration.

(3) The district is incorrect. The $491,567 reduction in CEEs is an adjustment that relates to the district's failure to remove expenditures for ancillary services from the 50 percent calculation, according to Chancellor's Office instructions. The $1,199,956 increase in CEEs is an adjustment relating to the district's funding of categorical programs. These adjustments along with other adjustments were added together to arrive at the net adjustment before ancillary services of $864,264 as shown

in the Appendix. On September 22, 2000, we presented district staff with a final spreadsheet detailing individual adjustments as well as the net adjustment.

(4) As stated on page 11, the Chancellor's Office has a long-standing policy that addresses this issue. Specifically, in 1985, the Chancellor's Office issued a legal opinion stating that 100 percent of an instructor's salary should be included in salaries of classroom instruction unless released from regular duties or paid a stipend to perform administrative duties. Thus, it was not left up to the districts to devise their own interpretation of this issue.

(5) The district suggests that it has no control over how it allocates resources during the fiscal year. However, by budgeting its expenditures in light of 50 percent law requirements and by monitoring expenditures during the year to identify budget variances, the district could have more discretion over how funds are spent during the year.

(6) The district's position is inconsistent with the Chancellor's Office's long-standing policy discussed on page 11. As the district confirms, the instructor was released from his instructional duties to develop curriculum and coordinate the administration of the justice program, which are noninstructional duties. In accordance with the Chancellor's Office policy, we made an adjustment to remove the noninstructional portion of salaries from instructor salaries.

(7) The district is incorrect. Our adjustment did not relate to the instructor's summer reassignment for farm operations, but rather to the instructor's fall and spring reassignments as a department chair. Our adjustment is in accordance with the Chancellor's Office's long-standing policy on this issue.

(8) The district is incorrect. The Budget and Accounting Manual page 4.59 required the district to account for computer software purchases as materials and supplies, not equipment. As stated on page 9, our audit covers district reporting for fiscal year 1998-99. While the district is correct that changes have been made to the Budget and Accounting Manual, these changes did not take effect until fiscal year 2000-01. In conducting our audit, we used the laws, regulations, and Chancellor's Office guidance in effect during the period of our review.

(9) In a September 20, 2000, phone conversation with us, the district's director of accounting conceded that the contracts at issue related to maintenance, not rental, of copiers.

83

cc: Members of the Legislature
Office of the Lieutenant Governor
Milton Marks Commission on California State
Government Organization and Economy
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press